

THE  
C A S E

OF  
WARE and SHERLEY

As it was set forth in matter of  
F A C T

And argued in several points of L A W in  
the Consistory of *Dublin*, in *Michaelmas*  
Term 1668.

BY *Dudley Loftus*, J. U. D.



*Dublin*, Printed by *Benjamin Tooke*, Printer to the  
Kings most Excellent Majesty, and are to be  
sold by *Samuel Dancer*, in *Castle-street*, 1669.

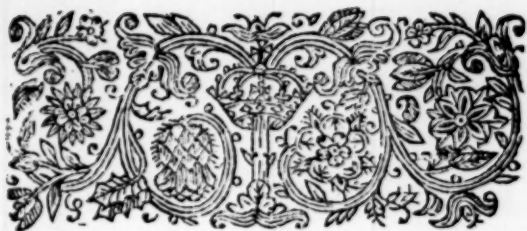
Wip L2820

SI

W

Cause,  
ceedin  
have u  
in not  
*panam*  
of info  
he we  
netent  
the no  
to brin  
ing his  
but a  
be goo  
streng  
Worle  
make  
thus m  
ciouf





SIR.

WE have with a most strict regard obserued all requisits, even to the least Circumstance of our duty, in prosecuting the Contumacy of the Defendent in this Cause, so far, as right practice, and the known rules of proceedings in this Court, hath instructed us, insomuch that you have upon our humble motion pronounced him Contumacious in not appearing upon due *Preconization ad informandum*, and in *penam Contumaciae*, you have decreed a procedure to the act of information *Contumacia ejus non obstante*, for my part, I wish he were present *in judicio*, that I might represent unto his Penetential thoughts an Historicall view of his great iniquities and the noe less injuries my Client hath received from him thereby to bring him to a true sence of his sins and his duty in Confessing his delicts, which indeed are such that if he were present, none but a *Tertullus* who Cares not how bad the Cause be so the fee be good, would presume to speake in his behalf, for were he strengthened with the patronage of the best Advocates in the World, and assisted with all other advantages which usually make Victory hopefull, nothing could be said in his excuse, yet thus much he may be assured of, that though he be Contumaciously absent, he shall not be overcome by a *Sopracargo* or

A 2

any

Wp L2820

SI

W

Cause,  
ceedin  
have u  
in not  
*penam*  
of info  
he we  
netent  
the no  
to brin  
ing his  
but a  
be go  
streng  
World  
make  
thus m  
cioull



SIR.

WE have with a most strict regard obserued all requisits, even to the least Circumstance of our duty, in prosecuting the Contumacy of the Defendent in this Cause, so far, as right practice, and the known rules of proceedings in this Court, hath instructed us, insomuch that you have upon our humble motion pronounced him Contumacious in not appearing upon due *Preconization ad informandum*, and in *penam Contumaciae*, you have decreed a procedure to the act of information *Contumacia ejus non obstante*, for my part, I wish he were present *in judicio*, that I might represent unto his Penetential thoughts an Historicall view of his great iniquities and the noe less injuries my Client hath received from him thereby to bring him to a true sence of his sins and his duty in Confessing his delicts, which indeed are such that if he were present, none but a *Tertullus* who Cares not how bad the Cause be so the fee be good, would presume to speake in his behalf, for were he strengthened with the patronage of the best Advocates in the World, and assisted with all other advantages which usually make Victory hopefull, nothing could be said in his excuse, yet thus much he may be assured of, that though he be Contumaciously absent, he shall not be overcome by a *Sopracargo* or  
A 2 any

any advantage of prosecution, hitherto, or hereafter to be taken against him, unless it be, by the burthen of his own Crimes, nor shall I take the freedome of saying any more in the stateing of this Cause then I would freely utter were he present; for my representation of things of this Nature shall never be disproportioned like the Evening Shadows, longer then the just dimensions of Truth, which I have alwaies esteemed as the *Rubrics* of the Missal, whereunto as the *Ritualists* obserue, it is more dangerous to add then to omit any part thereof, nor shall I describe it in the imagery of an Oratour, for it is our advantage to set it before you and this Congregation in the plainness of a clear and naked representation. I shall therefore deceive the expectation of those who think I am come to this place to suborn Common attention with bravery of expressions, or to tickle the Eares of the learned, with refined subtilties of Law and Scholastick discourses my chiefest aim being rather to satisfie the bench in a shrt Discourse, then the Curiosity of the standers-by in an unnecessary profusion of words, for I am of the *Arabian* Authors Mindes who: saith there is no benefit *אין תועלת* &c. *Viz:* that cause may be suspected to want the patronage of Arguments which is pleaded for, only with multiplicity of words, St: *Chrysostom* makes his entrance into one of his Sermon's with this preparation to attention, *Attendite diligenter non enim rem Vulgarem vobis pollicemur*, I shall upon the like ingagement desire the heedful attention of every one who is within the Compasse of hearing me this day, for I promise you *non dico aliquid* not any thing that falls within the ordinary Occurrences of affaires, but things so horrid and dreadful to human eares, that I have not any exaggeration of words great enough to express their *Exorbitancie*, things seldom read of in *Pagan* antiquity, but so extraordinary and beyond nature prodigious, that they're sufficient to astonish Heathens, and make the most Barbarous Nations even the wild *Irish* and the *Clangregores* in Scotland to blush;

blu  
cate  
of t  
wor  
its e  
natu  
of ti  
amon  
bove  
cf,  
rou  
as it  
relati  
fac't  
Earr  
pidity  
bound  
custon  
& unu  
say no  
selfe to  
the fra  
Plainti  
Calum  
make g  
all poss  
vantage  
Courts  
sted bet  
the Law  
tion. Be  
be reck  
I open

blush; things so strange that the bashful modesty of an Advocates style cannot reach unto, nay so far above the expressions of the boldest Poets that there is not sufficient efficacy in all the words that ever the world made use off, from the first instant of its existancy to this moment of its decrepit Age, to express the nature of them, and should we outlive the period and obsequies of time I am sure we should never hear of greater *Barbarismes*, amongst which there is one of greatest remarque, a crime above the rest so heinously flagitious, that the very name thereof, carries to every mans understanding such a notion of horror, as it requires as much faith in the Hearers to believe it, as it did wickedness in the offenders who perpetrated it, the relation whereof may perhaps wring Teares out of those pale fac't and obdurat walls, put the Bench into a Swett, make the Barr to groan, binde up the senses of the standers-by in the *Stupidity* of a dull amazemet, and transport my self to the utmost bounds of a sober passion whilst I in the recitall finde an unacustom'd horror, entring into the Marrow of my shivering Bones, & unusual resentments invadeing every part of my soule. I shall say no more in General to excite your attention, but betake my selfe to the *narratio facti*, wherein I am to set forth not onely the fraud and violence which the Defendent used against the Plaintiff in a most *Prodigious rape*, but also the impudence of his *Calumny* in the *justitiation* of *Marriage* with hir which I shall make good by proofs amounting to a pitch of evidence above all possibility of Contradiction, and then we shall desire the advantage which the Law affords in that case, as well by the Courts declaring that there was no *Marriage* lawfully Contracted between them, as by inflicting on him the just severity of the Law, for his Correction & reformation, and our due reparation. Before I enter into a recitall of the Cause I hope I shall not be reckoned amongst the *Perditempi* if by way of introduction I open a prospect into the *Contingentia facti*, briefly glancing

on the persons for the Disparity of their Condition will be of force not onely to shew the improbability of her consent to Marry with him, but also if the saying of *Ariminensis* be true ( viz: that ) *ex vilitate personæ offendentis crescit gravitas injuriæ* will much aggravat the rape and the Contumely of his most impudent jactitation, of Marriage with her, which like word gives a deeper Colour to his offence and makes it above all respects inexcusable: for of all the reproaches that Satan the old *Calumniator* Could rake out of the foulest Channe's of Hell, none could be greater or sharper in her esteem, and therefore the *Lacedemonian*, who in Commending his Sword said it was sharper then *Calumny*, if he had ever experimented so sharp a *Calumny* as this would not have made that Comparifon. Whilst I speak of the Defendent, I shall endeavour to Imitate *Joannes Mylaus* a famous Iurisconsult of whom it was said, *ita veritatem amplectebatur, ut dicendi acerbiter vitaret*; As for his fortune, I shall say nothing, for I am none of those who measure the Sutableness of Matches by the rate of the subsidie books, nor do I think that my Client in the choyse of a Husband will tie her self so strictly to the rule of Logick as to hold that *à quantitate res dicuntur pares aut impares*, we shall therfore allow his Patrimony better then his Education or birth, which as reports informe us is very Inconsiderable and far beneath her Extraction, he being a man lately drawn out of the Lees of Poverty, and the obscurity of a mean Condition, but of his Original I shall say nothing nor shall I urge any more in the representation of him at present then what appears out of the evidences taken in this Cause, which denote him to be in his Nature not onely as an impostume ready to burst with a tumid *Plethorie* of self Concept, but as a Monster posselt with a Legion of excessive hopes for *sses alit agricolas*, and a *Glutinous* desire to raise himself to an Estate, in prosecution whereof, his ambition Ridd on without Reyns of restreynt, until at last

per fa  
but th  
carrie  
Appet  
bound  
he the  
but by  
fortun  
nor p  
of Inst  
figues  
a piece  
on his  
fesseth  
Vaile  
the lo  
more  
cared  
much  
Furth  
mour  
mens  
often  
ly hur  
such a  
unto n  
Bowel  
Pump  
stream  
row fr  
Wom  
was h  
and i

*per fas aut ne fas*, he became Master of some Acres of Land, but then the Transperations of so unexpected a prosperity, carried him so far above himself, that he scorn'd to subject his Appetite to the Yoke of reason, or to confine himselfe within the bounds of Moderation, for *rustica gens nescit habere modum*, he then knows not how to measure the height of his Fortune; but by a *precipice*, and so becomes the Ingeneer of his own Misfortunes, as being neither wise in the Choyce of his purposes, nor prudent in the use of means, nor happy in the imployment of Instruments he sett's on work for the Accchievment of his designs. In his Conversation he hath shewed himself so frenetless a piece of Impudence that shame-faceness never cast her Vaile on his Fore-head; And so little remorse of Conscience possesseth his Soule that no sinn seems to trouble him which he can Vaile or Maske from human perception. And such hath been the lowness of his minde that the hope of Interest did prevaile more with him then the horrour of perpetual Infamy; For he cared not how great mischiefs he attempted, nor with how much disgrace, So that his Indirect ends might be attained. Furthermore in his Conversation, he was of so morose an humour, as that he deemed all Civil Compliance with other mens humours, a crooked deformity from his own, He was often subject to wrathful discomposures of minde and frequently hurried by the giddy and rapid Violence of his passions to such a pass; as that he could neither speake sence nor harken unto reason; Whilst he Evapourated the heat of his inflamed Bowels, he was of so obdurat an heart that you might as soon Pump water out of the hardest Rocks or distillue them into streaming Fountains, as draw a Teare of Compassion or sorrow from him, for he esteemed the bitterest Tears of oppressed Women but as the fluid droppe of a sickly rheum; Again such was his disposition that he was apt out of stomachfull hatred and revenge to Vomit out spightfull untruths, and to brand

his Neighbours with Calumnious Impressions; In his amour he was so destitute of reason and so much drowned in Sensuality that force and rigour were the onely Arguments he used to invite Consent, seeking rather by the insolency of a rude Carriage and peremptory menaces to Vex Women to a Compliance then by soft perswasions or the Courtship of faire Language civilly to allure them, and when Lust Commanded the exercise of his Libidinous Limbs, he had no regard to Maidenchaſtity. I know that *Præscientia non ligat res in eventum*; Yet if it were Convenient by a Judicial prognostication to foretell the tendency and success of affaires, I might perhaps tell him that his Horoscope hath cast so Ghastly a Glance upon his *Nativity* as doth portend a direfull event, & would if published to his notice like the Fumes of Mercury and Orpiment loosen his joynts to tremblings and distortions, and make him in your opinion like the *Materia prima* which as *Aquinas* 1. Par. q. 5. Art. 3. ob. 3. saith *non habet rationem appetibilis sed appetentis tantum*, what I have said Concerning the Defendent is rather cross to my Natural Inclination then a digression: for to speake to any mans prejudice agrees noe otherwise with me then as Motion to light or heave Bodies *Quibus non Competit moveri nisi secundum quod sunt extra dispositionem naturæ. Aquin: p: 1: q: 18.* but the prosecution of my subject hath directly led me thereunto, and I finding so great a Concours of people tooke the advantage of so many Witnesses to shew you how little probability there is, that any Woman should Consent to marry with a man so dangerously qualified, especially my Client, whom I am now to represent unto you, as she is, and therefore, so different from his Nature and qualifications, that you will easily conceive, that it were as likely to bring two paralel Lines together as to conjoyne these two in Marriage, for every one knows that a Judicious woman may be resembled to our sence which as St. Thomas obserues *delectatur rebus debite Proportionatis* and that



that it is in Marriage as it is in Musick *Quo voces sunt propinquiores sibi invicem, eo meliorem Constant Symphoniam* for which reason it is said that the *Jonick* and *Hyper Jonick* moods agree better in Musick, then the *Jonick* and *Dorick*, which agrees with *justitia Condecencia* mentioned in the School-men which tunes up the hearts of Married people to a Melodious unisone; I am now to draw the other line of the paralel in a true representation of my Client, whereby it will appear the disproportion between them is too great to be reduced to an adjustment and that she could not without renouncing the Honour of her Birth, and putrifying the memory of her Ancestors, level her Affections to the meanness of his despised bed, which cannot be made *Isoperimetricall* to his quality, and that they were no more likely to agree in a maritall State, then Contraries can be Lodged together in their most intent degrees; nor more likely to be Conjoyn'd in affections then the *literæ Illegabiles* in the *Persian* writings. To speake of her Birth and with my words to Magnifie her in remembrance of the many Vertues and honours which have shined with great Brightness as well in her Mothers as in her Fathers family would be to no more purpose then to shew light to the Sunn, or to breath on a perfect Diamond, and to speake of her fortune would be to publish that, which is already well known; Therefore I shall transfer my self from that Consideration of dissimilitude between them, unto her Education and Personal endowments, She had her Education altogether under her Mother who was not onely a great pattern of Vertue and Modesty, but a severe instructor of her in the rudiments of Religion the rules of Morality and all principles of Vertue and Honour, under whose Disciplin she was kept in as strict a regularity as if she had been a *Carmelite* or a *Carthusian*, as is well known to many who hear me: inso-much that from her infancy she was so brought up, as to esteem chastity the Richest Jewel of the Femal Sex, wherefore she

she hath been so well fixt by Education in the center of a Chast  
 resolution, that she could never be drawn (by perswasions or any o  
 ther moral inducements of delight comodity or advancement that  
 the World could suggest unto her ) to Yeild to the bent of any  
 exorbitant Lust or Immodest desire, and since the death of her  
 Good Mother, she hath alwaies profest that she never thought  
 her will could be carried in its proper Orb, but when it was  
 placed in the good likeing of her nearest Relations and discreet  
 est Friends, according to whose precepts and Admonitions she  
 endeavoured strictly to conforme her deportment in all things,  
 she is not therefore like the young Women of *St. Frianos Gate*  
*in Florence*, nor was she when the Defendent unhappily knew  
 her, like the practiceing Dames of *Paris*, who find nothing  
 new or strange the first night of their Marriage, nor was she any  
 of those pretenders onely to Chastity, who have sold their  
 Virginities as often as new made Priests do their first Mass,  
 but I may say in a very high degree of well grounded confidence,  
 that notwithstanding her late misfortune she is not only an ap  
 proved example but also a wonder of Chastity; The like  
 whereof will not perhaps be left upon the Records of this Age  
 (all circumstances concurring) to the view of Posterity, inso  
 much that she may be perfectly resembled to the pretty Ermin  
 which had rather expose its selfe to the hazard of Death by the  
 Hunters Violence, then seeke the preservation of life in the  
 wayes of defilement; So much of her Education in Vertue and  
 modesty, which gives her a large claime to the knowledge of a  
 worthy deportment: And now I am to slide into the consi  
 deration of some of her most remarkable qualifications which I  
 shall briefly set forth in the light of Truth but not in the spen  
 dor of Eloquence. In the first place she having been instructed  
 that an Estate without Vertue and merit is but a Testimony of  
 good Fortune and no Advancement to felicity, she hath not on  
 ly endeavoured to keep her self by a Modest retirement out of  
 the

the bad Customs which over-whelm'd this Age, but also hath Labour'd the exornation of her self, with all qualities belonging to a Gentlewoman; So that to speak Negatively of her *per remotionem imperfectionis*, she is not blinded with passion nor puffed up with Pride, nor precipitated by ambition, nor tickled by vaine glory, nor melted by pleasures, nor inflamed by Lusts, nor enraged with revenge, nor tumoyl'd by Ambition; And again to describe her positively, for the comeliness of her Statute, Figure, Port, Gate, Complexion, Countenance, Promptness of wit, and a fluent Tongue the ready and clear interpreter of her ingenuous conceptions, there are few of her Age who go beyond her; I am resolved against enlargements of discourse otherwise I might speak diffusively of all these her laudable endowments, as also of her affability which is the Mother of affection, of her courtly accomplishments consisting in a proportionable agreeableness and compliance with all commendable or tolerable dispositions; If any shall object that the above recited qualities are baits which float upon the water without a hook and do rarely catch Husbands, to this I reply that she hath in surpluse of these a noble Estate sufficient to recommend her to the prime or at least the second rate of Husbands in the Kingdom: and therefore putting all together, I leave it to consideration whether a Lady so highly qualified and advanced above the Defendant in all respects, could comport in Marriage with a man of so mean an Estate and so contrary dispositions and habits of mind, in the mean time, I rest confident that if he had been crown'd with the Royal state and imperial command of all the Kingdoms upon Earth in their most Flourishing condition and pacifique possession, and if she by Marrying him might have enjoy'd that universal Dominion the length of the worlds duration she would never have consented to the Fetters of his embraces.

I am now nearer approaching to the thing in hand, and am in the first place to reduce into a succinct and Methodicall *Narrative* the beginning progress & conclusion of the whole matter of Fact, as well for the information of the Court, as to satisfy the curious inquisition of the People so far at least as it is convenient to stamp a figure of so foul a fact in their imagination; for, as it was wisdom in *Galen* not to leave behind him too subtile a Theory of Poyson, least he should thereby give occasion for the too ready practice thereof. So I dare not be too particular in relating the many subtilties and contrivances which the Defendant used in this affair, least bad inclinations in others may be too fully instructed to act the like evils, If I should afford them too broad an inspection extended to all circumstances, the *to say a word the* And my first rise is, that the Defendant forgetting the aforementioned disparity between him and my Client grew up to so high a conceit of himself, as that he presumed to make addresses to her in the way of Marriage, which he seem'd to prosecute with very much instance and solicitation: but my Client, though she was young, and not arbitress of her condition, yet knowing how to make a just estimate of her self, and finding nothing in him that might fit him for her acceptance, she immediately desired him to discharge his mind of such vain hopes, and afterwards he renewing his motion to the same purpose, she repel'd him with severity and contempt, not out of a feigned unwillingness, but a real aversion, and never after looked upon him but with a careless disdain loathing and detestation, and withall assuring him that it was as easie to blow Flint into flames with a paire of Bellows, as to kindle any flames of love in her by the breath of his solicitations, for his fairest words were as harsh to her ears as the noyse of Peacocks, and she took no more delight to see him, then fore eyes do to behold the Sun in its *Meridional* altitude, she hated him as a Jew doth Images, or a non-  
Confor

Conformist a Surplice, she feared him as a Monster and avoyd-  
 ed him as the Plague; Accounting his company as pestilential  
 as the infectious exhalations of the Dogs star, or the *Maligne*  
*influence* of a Comet: And indeed it many times happens that  
 men advanced above desert from a low degree are like those  
 Exhalations which being raised from Dung-hills become Co-  
 mets of a direfull influence: hereupon the Defendent finding  
 that the more he reinforced his attempts the more she stiffned  
 the bent of her resolution against him; insomuch that her soft-  
 est answers were so far from giving him hopes, that they did  
 exceedingly increase his dispaire, and that there did not re-  
 main in her disposition the least comp'vant softness which might  
 be wrought to his desire, And that nothing was to be expect-  
 ed from her but what an inexorable necessity could extort, and  
 he being rigidly resolved to use arguments of force, where force  
 of his arguments would not prevail, he sharpened his revenge  
 as a *Persian Author* saith בסנני דלי on the Whetstone of his  
 petrified heart, and put himself upon a design as Barba-  
 rous and *haynously flagitious* as the malice of a disappointed Am-  
 bition could invent, or the greatest cruelty perpetrate; And  
 that executed in such manner as never any man who had his  
 face wash'd at a Christian Font, especially a Protestant did  
 own. I see ye begin to wonder at what I say, but that your  
 thoughts may be the less transported into admiration, ye may  
 be pleased to remember what *Salvianns* hath said viz. That some  
 in his time were Christians only in *opprobrium & Contumelians*  
*Christianorum*, in such sence the Defendent may perhaps pro-  
 fess himself a Protestant, but to proceed I must tell you how  
 he advanced from design to endeavour, and from endeavour to  
 act the greatest violation and injury upon my Client, that she  
 was capable of receiving, (for the greatest torments that Ty-  
 rants have invented, or Martyrs suffer'd are not to be compared  
 with the *Violation of Virginity*) first of all therefore by a slye and  
 crafty

crafty insinuation, he winds himself into a familiar, though secret Acquaintance with her Maid whom then she took to be a plain faithful and obsequious servant, but afterwards in the event, proved a *ci,ce*, *Medea*, a *Sphinx*, a meer shop of subtilties, a practized *Medianera* or instrument in abomination: he proceeds so far as to Bribe this Maids good will to the favouring of his lust in the betraying of her Mistress, and draws her so far along with him, as that she had at length not only a finger in his Plott, but was also engaged therein up to the Elbowes; and with as much endeavour as secrecy, industriously served his design, which was then as much hidden from the Plaintiffs observation, as is the middle of a right line from our sight when the raye of Vision falls upon the Extension, according to the diffinition of a right line thus given in the *Persian* Language by *Machmad Shah Cholgi* הט מכתקים אבנת כת טרפ א וסט אטרא בבועאבד דין ואקז שוד דר אמעוואד שעאע בצר and after they had a long time wrought in the Vaults of darkness, they contrive by a fraudulent abduction to deliver her to the disposal of his force and Violence, the Maid therefore pretends an importunate invitation from her sister to sup at her house in *New-street*, as a Skreen to the private design of her abduction: my Client was at first very backward in her Inclination to go thither, yet at length through much perswasion she condescended to that, which, so great an importunity had urged her to, and promised to go; Whereupon a Coach was prepared, and thither she went, where without the least shadow of suspicion, she was entertain'd untill about eight of the clock at night, and then as well out of her own inclination, as out of a desire to conform to her Parents will, who could not endure her being out late, she was desirous to repair homewards & betakes her self to her Coach, which being put into motion ( as she thought homeward ) she fell occasionally into earnestness of discourse with her Maid, which together

together with the darkness of the night so surpris'd her animad-  
 vertency of the way, that she never doubted whether she was  
 going, untill at last, hearing some noyse she put her head out  
 of the Coach, and then though the night was mantled in much  
 darkness, she discovered that she was carried beyond Lt. Coll.  
*Fernlyes* house in *St. Cavans-street*, & there besett with an armed  
 Troop or Squadron of Horse consisting of about eight Horse-  
 men, who seem'd to be as void of reason as they were predi-  
 gall of words, which together with their rude compulsion us'd  
 in hurrying on the Coach-man intimating their intention to car-  
 ry her away by force besides this she observed then in the  
 Carriage of her Maid more than ordinary cause to suspect her fi-  
 delity, and moreover the appearance of the Defendent who at  
 the same time flash'd terror out of the angry *Caverns* of his Pu-  
 miled face, cast the greatest injections of horreur into her  
 terrified fancy: hereupon cold fear seized the blood in her  
 veins, and hudled together her thoughts and spirits in such a  
 confus'd amazement, as that she lost the succours of her usu-  
 al reason, and knew not well what resolution to take, then  
 thinking it too Insignificant an utterance of her grief, to ex-  
 press it only in the common evidence of tears or to sigh out  
 the force thereof with a moderate, Woe is me! she according  
 to the sharpness of her *Resentments* cry'd out with the utmost  
 extent of a roaring exclamation, imploring aid and pity, but  
 they who would not hear her with patience, nor answer her  
 with respect, like the bloody sacrificers of their Childrento  
*Molech* in the fire, drown'd her lamentations with the great-  
 est shouts and most obstreperous noyses they could make, least  
 her complaints being understood, she should be rescued. I  
 leave you therefore to imagin what strange impressions were  
 now begotten in this weak and timorous young Woman, af-  
 frighted with the dreadful face of a present confusion, and  
 the fore imagin'd forms of futurein creasing troubles, whilst  
 they



they with their *Menacing* incitations adding speed unto the Coach-mans pace, every step of her rapid progress represented new horrors to her imagination, insomuch that she being now carried beyond hope of succour from the Town, and destitute of all assistance that could Minister defence or rescue unto her in the Countrey; And there being then, no hope of escape to any Sanctuary, she being guarded as strictly by these Russians as was the Holy Sepulcher by the Pharisees: She was transported out of her senses into a deep swoon, but shortly after returning out of that Extasie, she *Meditated* deeply with her new recollected senses, which advised her to fortifie her fainting resolution, and rather to make use of the force of reason than the *Vehemency* of passion; and thereupon she changed her angry and loud Exclamations, into soft & mild persuasions, hoping thereby to alter the byas of their rigid Inclinations into a Compassionate sence of her sufferings, and certainly had not their consciences been seared with the hottest Iron in the Devils forge they would have been toucht with a sence of her grief, which would have wrung tears out of a *Marble statue*, but alas her stiffness of speech served but as a burning Glass to inflame the passions of some of them and the stiffness of her words where they most prevail'd, were applyed as water cast upon a Smiths forge, which makes it burn inward with more intensi on for a time, but afterwards break out with a greater efflamation, she then found the *Arabian* saying true which sounds thus *אין כח אין אומץ אין עז* *Vil.* Where power is wanting endeavour is vain she therefore remains groaning under the deplorable increase of her miseries whilst they in a rude and unmercifull courage, force the Coach-man to incite his Horses to a swifter course; by this time darkness had muffled up the face of the world in a hood of obscurity as dark as Pitch, she being then only happy in not being able to discern the Defendent, but much more unhappy in wanting light how to avoid him, she then attempts  
the



the throwing of her self twice or thrice out of the Coach, either to end her grief with her life, or to escape by the obscurity of the night, but still she was prevented by the strictness of the guard they held over her, wherefore being now constrained to obey the overruling force of a violent and invincible necessity, she must sit still in the Coach melting her thoughts into the bitter Juice of tears, as if she had bin of the *Hyades* who wept themselves to death, and as every step of her rapid course was a variation of her misery, so sometimes she implores pity from them, and sometimes she cries aloud for help from the Countrey, until at last in the swift course of so great a violence she was drawn beyond the conduct of her own inclinations, so farr almost as the Bridg of *Donogh-brook*, where they forc't her out of the Coach with intent to put her behind one of the Horse-men, but then, she being transported beyond her ordinary temper by so just a cause of Indignation, and being prepared to run through all accidents of fortune, and desirous rather to precipitate her self into a neerer and more certain danger of death in resistance, then to be carried away further into their merciless power, she managed that reliques of her remaining strength to the utmost of resistance, and though winter had then cast its cold influence in great extremity on the earth, she cast her self into the deep and miery Highway where she remain'd so long kneeling in the myre as if her knees had bin rooted in that posture, and struggled with them in that place, even to the *Laceration* and tearing of her Cloathes and the loss of such Ornaments as she carried about her, all which time she did with a loud and shrill voice represent unto the affrighted Neighbours the sad accents of her oppressed heart, expressing its self in sighs groans and most lamentable outcries, proclaiming her protestations to the world against her going along with them, or ever to consent to marry the Defendant, *sed sola erat in agro, Clamavit, & nullus affuit qui liberaret eam,*

eam, at length they perswaded her to a belief of that which they confirm'd with many oaths, which was their promise to bring her immediatly to *Dublin* in case she would afterwards permit the Defendent to address himself unto her, and she being then tyred even to the loss of breath and unable to make any further considerable resistance, told them that on the terms offer'd, she would admit of his addresses in *Dublin*, whereupon she was put behind one of the Horsemen, but as soon as she was mounted on horseback she found clearly that all promises though confirm'd by oath stood for Cyphers in their accounts, for she was immediatly tyed with *Tenacious* knots of strong ligaments to one of the most Churlish and most Robustious Horsemen amongst them, who with the rest of that Rude Company, carried her away all that night, when according to their irregular revolutions, of their sundry passions, and the variety of her interchangeable misfortunes, sometimes a disturb'd imagination stopt the passages of her speech, and sometimes new and sharp resentments gave her a voice to cry out, at length that no parcel of Calamity might be wanting to increase her misery, they declining the high-ways as *Heralds* do in *Italy*, bring her through the solitudes of a Countrey so ruinous and desolate, so void of inclosures and habitations and so unfrequented that the high-ways were not distinguishable from the rest of the land, not improperly resembling the *Arabian* deserts, where the *Caravan* Pilgrims from *Damascus* to *Mecca* find out their way by the compals and Starrs: at last when she might have grown into some doubt of the School-mens doctrine, *de nemine desperandum in via*, almost starved with hunger and co'd, she arrived at a Cttage about twenty miles from the City, where being taken from her horse, a most every limb of her as it were complying with the unwillingness of her mind, wanted sence and motion to carry her into the house, so that they rather out of necessity than an officious civility carried her

her into that dismall *Pagliarella* or Cottage, where, as before, every stepp of her wandring abduction was but a variation of her unhappines; so now every minute of her abode in one place, is to produce, if not more, at least greater misfortunes; for dureing hir Commoration in this place, she is encounter'd with necessities as well as force, and inward perplexities of minde, as well as outward inconveniencies of body, in relation whereof I shall be brief, least they prove as troublesome to you as they were greivous to her; For I am assured that neither you nor this auditory could easily swallow the tediousness of my discourse should I handle all at length, for long discourses will not be received by them so easily as *Wells-women* swallow down *Flummery*, nor would they all be as easily credited by a tyred auditory, for they are indeed much like the Cloysters of the Temple whereof a *Greek* Author saith thus

Η ΕΠΙΣΤΗ ΤΟΙΣ ΚΑΙ ΕΙΣΟΡΓΗΘΗ ΣΥΝΧΕΙΣΛΕΞΕΙΣ ΘΕΤΕΑ ΤΟΙΣ ΕΡΤΥΧΕΙΝΣ ΕΙΣ

as incredible to those who saw them not, as they were an amazement to those who did but much more to the afflicted sufferer whose abode in that place was like that of Purgatory where *durante Commoratione* there is nothing but torture and torment, for here she did not only suffer under a totall disfigurement of all accomodations fitting for a person of her quality, as want of competent fire to oppose the rigid season of the year, food to uphold her, and convenient bedding to repose her selfe on, but also she was Molested with terrours of death and other horrible affrightments, but these were nothing in respect, of what she first suspected in the agitation of her minde and afterwards found too true in the event, for not only the care of preserving her Virginity pierced her Brain, but also the fear of loosing it transfixt her heart, but what was worst of all is yet to be spoken off whereunto I shall descend by degrees, hoping that you will pardon my Language, if it chance to be fullyed in the representation of so foul a fact for as it will not  
C  
become

become me to adulterat truth in the description of a rape ; so I must not Mutilat my Clients cause in cutting off any thing that is essentially requisite yet it shall not be said of me as it was said of *Zazius*, *Verbis inquinatis significantibus tamen utebatur*, noe, I shall rather decline propriety of terms in representation of *obscene* actions for they are in some sort like the verity of faith which as *Adisiadorensis* observes, *auctores melius expriment per vocem non significativam quam per vocem significativam*, at the first entrance into the house she found the now Defendant in a feverish fervour of minde, as sullen as a Bull-finch, and as surly as a Lyon, evaporating like *Etna* or *Mongibello* out of his inflamed bowels the discontented passions of his disappointed ambition, shortly after his countenance and undecent gestures did interpret his design to violate her Virgin Modesty, which more clearly after appeared, by the more express explication of his words, soliciting her to unchast imbrace, whereby she feared, that he having gon so far, would not finde rest but in extreems, therefore her Caution put a strict watch on his behaviour all that day having as great a regard to every of his motions as Astrologers have to the Planet Dominant, and when night began to wrapp them in darkness from the eye of the world, she being more willing to prevent ravishing by Death then to survive ravisht, and being as fearful that her weakned body had not sufficient power to resist, as she was assured she had not patience to indure the dishonour of a rape, she resolved to be her own Executioner, choosing rather to cast her self headlong, into the dark Dungeon of the Grave, then to submit, as a tame sacrifice to his lust: wherefore she made a shift to convey into the straw that was assign'd unto her for her bed, a Sword, with intention either to destroy him or her self in case he should dangerously attempt her Chastity.

Observe I beseech you, *Joseph* did leave his cloak behind him ( in a strumpets hand, rather then he would yield to her lewd  
intice

enticements, *Lucretia* suffered Ravishment, and afterwards became her own Executioner, but this grand exemplar and sublime pattern of Chastity, whose fear did produce effects of courage, being as willing to part with her life, as *Joseph* was to forsake his Garment, to preserve her Chastity, the richest Jewel of the female sex, did so far exceed *Lucretia* the wonder of Roman Chastity, that she did not onely choose freely to give up her life, by a Noble Anticipation, to prevent that mischief which *Lucretia* survived, but also would rather have expired in a generous resistance then suffer the hazard of a disgracefull Succubition and Compression, I am not willing to arrest your attention with any long discourse foraign to a bare Narrative of the matter of Fact, yet before I proceed further therein I shall begg leave to interpose a short parenthesis in justification of the Ladies intention in particular, and of their practice who have hastened their own death, to prevent the intollerable disgrace of Ravishment, hoping it will not be accounted a troublesome or useles digression,

I shall therefore in a word or two humbly offer to your judicious censure, what I conceive is at this time suitable to that subject, and may serve for the future to conduct the conscience in any case where persons shall be reduced to the deplorable election, of suffering Ravishment, or of laying violent hands on themselves.

I know that the learned *Taylor* late Lord Bishop of *Down*, in his cases of Conscience doth so much cry down a voluntary dying to preserve chastity, that he saith it is no other thing then to sin to avoid sin, which he compares to *Fannius* his case of fear,

*Mortisq̃ timorem,*

*Morte fugant ultroque vocant venientia fata.*

and making use of these words of St. *Chrysostome* to leap into the Sea for fear of ship wrack, and to dye before the wound is given, he at last concludes in this comparison that to do violence to our body to preserve it chaste is as the burning of a Temp'e to prevent its being profaned, he might have expressed himself as elegantly in the words of the now Lord Archbishop of *Canterbury* in another case, if he had resembled such an act by the starting horse, that to shun a shadow leapt into a precipice. I know also that St. *Hierome* on these words, *Jonas. i. Mittite me in Mare* expresseth himself thus much in favour of that learned Bishops opinion, *non est nostrum, mortem arripere sed illatam ab aliis accipere, unde & in Persecutionibus non licet propria manu perire*, that is to say, we must not snatch death with our own hands, but receive it when it is impos'd by others, and therefore in persecutions we must not dye by our own hands, so much St. *Hierome* in defence of the Bishop.

I cannot Iustifie the Ladies intention but in opposing the Bishops opinion, and by answering the allegation of St. *Hierome*, which seems in the sound of vvords to make so much for him.

To answer therefore the allegation out of St. *Hierome* is a thing that vwill easily be done, for the limitation of his vvords by an exceptive clause immed'atly subjoyned to vwhat is alleged, viz, *non licet propria perire manu* running in these precise terms viz, *absque eo ubi Castitas periclitatur*, brings St. *Hierome* to my side, and declares him opposite to the Bishop, and therefore if the judgment of that ancient and most learned Father, be as vweighty a testimony to Truth as the opinion of the Bishop; I need say no more to bring both Scales at least to a *Contrapeso* or *equilibrium*; but to vweigh down the same vvith more presture of argument on our side, I shall cast in a *soprapeso* compacted of Law, illustrious examples and due applause of those who in such streights have hastned their death.

The Law is clearly exprest in the words of *Paulus libro undecimo* recited in the ff. *1 isti quidem*. ( ). *quod si dederit*, where the subject being violation of Chastity, it is said, *viris bonis iste metus Major quam mortis esse debeat. i. e.* he that fears to loose his Chastity, fears more justly then he who fears the loss of life.

As for presidents I shall not bring into example those w<sup>o</sup> for less causes hastned their deaths, as the Prisoner of whom *Seneca* tells us that being to be exposed to wild Beasts in the Theatre, he broke his neck in the sponde's of the Wheele where with he was drawn; nor *Sampson Saul* or *Razis*; who are usually alledged as common Vouchers to prove that a man may hasten his ovvn death.

Be pleased to recal into your Memory that vvhich Bishop *Taylor* if he vv ere alive could not deny; That vvhen the *Muscovites*, broke into *Livonia*, and in their sacking of the City *Wenden* used all manner of Cruelties, and Barbarous inhumanities to Men and Women, filling all the streets and houses vvith blood and Lust, a great many of the Citizens then running to the Castle, blevv up themselves vvith their Wives and Children to prevent those horrors and flames of lust, which they abhorred more then death.

I am sure you cannot forget the example of *Pelagia* mentioned by *St. Chrysostome*, vv which comes home to our case. *Pelagia virgo quindecim annos nata sponte sibi necem maturavit, parata quidem erat ad Cruciatu tormentaq; & omne suppliciorum genus perferendum, sed metuebat ne virginatis Coronam perderet. i. e.* She being a Virgin of fifteen years of age, of her ovvn accord she hastned death to her self, she vv as indeed ready to have suffered all sorts of most exquisite Torments, but she vvould not loose the Crovv n of her Virginity.

So much may serve for the Legality and illustrious Examples, of hastening Death to prevent Violation of Chastity..



I shall now make it appear that it is not only lawfull and according to good examples, but also just and very commendable from the further discourse of St. *Chrysostome* on that occasion, hence you may perceive saith he, that the lust of wicked Hangmen struck fear into *Pelagia*, and therefore from their injurious lust the Maiden removed and snatcht her self, having had a just cause by her Voluntary death to prevent so great an injury, as the loss of her Virginity: it is also reported by *Laurentius Muller* that the Act of the forementioned *Livonians* who hasted their own deaths to escape the lust of the *Muscovites*, was by the rest of their Countrymen, and even by the *Muscovites* themselves reputed Excellent and admirable, and Bishop *Taylor* himself confesseth that the Authority of the book *Macabees* Commends with great applause the of *Razia* as glorious and great.

I having thus shewed you that the preservation of Chastity by Voluntary death may be justified by Law practised by Saints, & commended by great good & wise men; I shall now only observe unto you that the last Consideration which is commendation of good holy and learned men, is the prime Argument which the same Bishop useth to legitimate the Stratagem of a lye, or the prevaricateing with a fullen truth, to save a mans life, in his cases of Conscience *lib. 3. cap. 2. n. 10.*

And now I am to return from this digression into the direct path of prosecuting my Narrative in which I may now justly tell you that her intention had undoubtedly succeeded in execution had not her treacherous Maid now apperaing an exercised Agent in the affaires of abomination privily tooke away the sword vvhich vvas sheathed above the hilt in the Straw, vvhereby she became disabled to offend him or defend her self. I observe that the Auditory is already transported into admiration, but I shall say as did *Charicleia* in *Heliodorus* τα μυστήρια βραβεύει

*Q. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

*i.e.* Do ye wonder at these things



things: there are yet greater which I am to relate: After this, she being much wasted by the abundant shedding of tears which some *Philosophers* term the sweat of an afflicted heart, and the excessive decay of her spirits by long wakeing, and relying upon the sworn promise of her Maids watchfulness, and the presumed humanity of the Family, she composed her self to a posture of rest, but alas the sleep of *Condemned Criminals*, and of women begirt with a streight Seige by a *Barbarous Enemy* was not more disturbd then hers, for that which should have afforded her rest to the reparation of her strength, served only to affright her imagination: untill at last in reality she found her self surprized by a *Barbarous* attempt of the Defendent to ravish her, she then in that Conflict sought for the Instrument of Death in the Straw, but found quickly that it was subtracted by her Maid, she was then plunged into a most desperat perplexity of mind, which had been enough to have swallowed all hopes of help had not her Vigorous reluctancy been seconded with an accident which hapned at that very time, which was a suddain raging fire that took hold on the Thatch of the house. Though she then escaped the danger by quenching the Luxuriant heate of his imodeest desires *per ignis appositionem* yet you may well imagin what direfull impressions of fear and horroure, were begotten in the timorous minde of this distressed Lady, for then she wisht that the happie accident which had put fire to the house, had also put her adversary into a flaming combustion: or that by a suddain incineration it had reduced her into Ashes. When the flame ceased, and her afflicted minde remained under the terrour of these imaginations, her Treacherous Maid faced with the Vizar of a smiling countenance perswaded her again to repair unto her rest, assuring her that she would lye by her, and with her vigilancy and assistance would secure her from the violence of the Defendent. wherefore being ready to faint in her spirits for want of sleep she

she suffered her selfe to be perswaded to yeild to that which  
 she perceived unresistably seizing upon her, but the Maid  
 which should have been her preservation proved her destructi-  
 on, insomuch that it was then with her as it was once with  
 the Jews in the Siege of *Jerusalem* according to the words of a  
*Persian Author*, דמאן עלאד ונמחן סב מרדנ מי שור  
*remedium vite causa mortis erat* they both therefore lye  
 upon the Bed of Straw, and after a while, the Maid most  
 traiterously withdraws her self after the manner of *Piantone*  
 which is *partire senza licenza e abandonare un amico*, to part  
 without takeing leave; and like a thorough paced Beast in  
 iniquity yeilds her place to the libidinous Defendent: who sur-  
 prized the person of my slumbring Client with all endeavour  
 he could use to deprive her of her pretious Virginity: she then a-  
 wakned rather to an amazement then out of Sleep resisted him  
 with the greatest opposition she could make, crying out for as-  
 sistance, whilst her Maid behaved her self as an unconcern'd  
 person, as if she had been one of the Daughters of *Martinus Ame-  
 lius* or of the Family of the *Achtsniets* the people of the house  
 terrified by so great a force as was then over them, gavenoe  
 help to her; but rather with a Cowardly silence seemed to ap-  
 prove that villanous fact; which otherwise I believe in com-  
 mon Charity they would have loudly declaim'd against, dure-  
 ing which time also his accursed Complices not only encour-  
 aged him in the pursuit of his lust by polluted discourses, more  
 loathsom then the sulphurious evaporations of Hell, useing  
 such words as might have moved *Lucretia Portia* or *Penelope*  
 to Luxury, but also helpt him & disabled her in such Barbarous  
 manner as that I may modestly expresse my self only in the words  
 of *Hydaspes* to *Claricleja* *dicere non possum ceterum vobis relinquo*  
*Considerandum*, at last having benum'd her Senses with the bruil-  
 ing of all her limbs as if he had been of the opinion which was  
 attacqued

attacked to an eminent Person yet living by a Curtesan of honour in Rome, called *Nina Barcarola* who not being so courteous to that Person as to others, he caus'd her to be publicly whipt in Rome, whereupon she writ a letter unto him setting forth that the reason of his severity to her, was, that he might take the more delight in her, for as much as *Carne battuta* was *pin saporita* flesh that was beaten was most savory.

Now the two Combatants as it were intangled in a Close, she was overmatcht by the prevalent force of his Lust; which govern'd the functions of his Libidinous limbs, and he like a stiffned pillar tooke such advantage of her imbecillity, that breaking the Seal of her secrets he blasted the verdent Laurel of her Virginity by Carnal knowledge of her, in which act as it was said of *Lewis* the 12th of *France* his acting with his Queen, he did rather possess then enjoy her, for I am most Confident upon the Credit of her own relation and other inducements of belief, that She tooke no more pleasure in that Compression and Coniungment, then a toothless Old woman would have done in chewing an hard crust. Many circumstances of this foul fact I am forced to put into oblivion for want of terms to express them and my words faile me & I want expression to set forth her resentments of them, yet it is easy for you to conceive in what manner she lamented the rigour of her misfortunes reflecting as well on the shame of her living friends as on the memory of those deceased: for as *St. Hieron* said of *Nepotianus*, *o Felix Nepotianus qui hac non videt*, so may she say of her good Mother and her Honourable Grandfather lately deceased, whose memory remains and will alwaies be preserved in honour, that they were seasonably taken off the Stage of this world before this misery might have befallen them, for undoubtedly they would have shrunk into horreur to have seen this day.

The matter is not yet ended, much is reserved for the  
D latter

latter Scene of this prodigious Tragedie , for the Complices of the Defendent do now boisterously endeavour to perswade her, that the only means to remedy this Blemish and to repair the ruins of her Fame , was to joyne the Ordinance of God to so foul a fact and to marry with the Defendent; but she though in the depth of her perplexities was judiciously convinc'd that to have married him afterwards , was, but to turn a green wound into a Fistula or an *Exulceration* , and therefore protested against it with as great detestation as she could express, whilst the Defendent seem'd rather to boast of, then to blush at so foul a fact.

You are now inform'd of a rape so Barbarous, so prodigious, that if it were possible to collect the voices of all Nations together, the Defendent would be Condemned by the suffrages of all mankind, unless the *Enormousness* of the fact might authorise his Crime, or he might be made innocent , by the Circumstances that did mainly aggravate it ; or unless his force were as able to abrogate as to break the Law: for of all vices appearing to the Flesh saith *Ottaviano Zuccaro* , *non é nissuno vizio che con esso seco porti piu puzzolente infamia.*

I am now to informe you that the Defendent at last thinks it necessary to overspread with forged pretences , the broad face of so great a Crime, and therefore he would palliate the rape under the colour of Marriage with the *Arix*. *Novatus* consecrated himself a Bishop, and the Defendent might as well have Married himself, if Coniugall relations might have been made up *propter* but that would not serve his turn, he wants two things , first of all the consent of my Client, secondly Celebration of Marriage: the first he endeavoured , but found it too difficult to obtain , the latter he thought easie to Compas by a forged Licence , he therefore in the first place applies himselfe to her by all Arguments he could take from the ordinary and known topicks of perswasion to gaine her Consent, but she

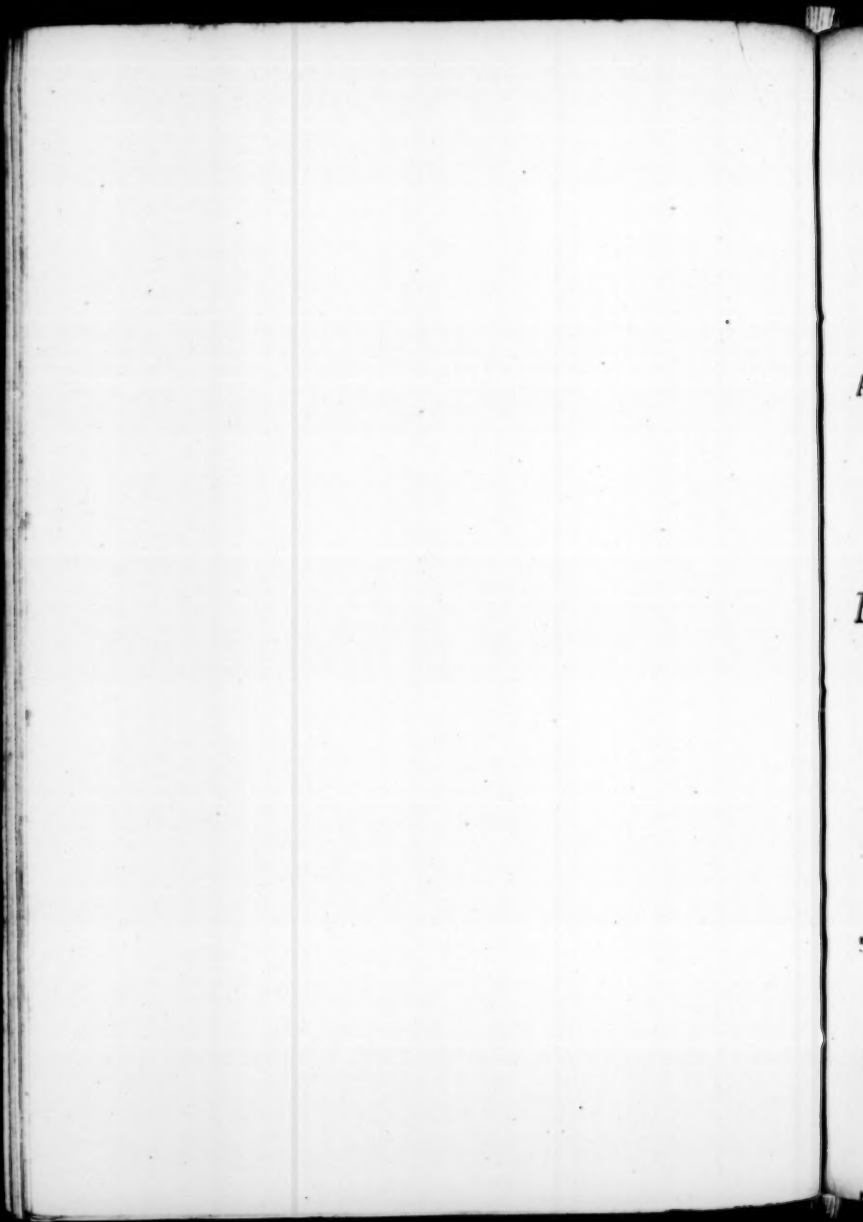
refusing

refusing Compliance, he cast a dismall Frown on his Countenance and in most furious accents of speech menaced her, sometimes to send her to *Gallway*, and sometimes threatned her with expatriation, telling her that he would immediatly send her into *France* by a Ship then in her view, which he pretended he had prepared for that purpose, all this did not prevail, therefore he resorts to his instrument of force that *incutiendo timorem*, he might at least screw her up *ad consensum non contradictionis*, & prevails by what means I am unwilling to instance in, with a Priest, to attempt Marrying of them, in pronouncing some words of the Office of Matrimony, which he did utter, notwithstanding that she had by many absolute words and exprefs and infallible signes ( and in particular as you have heard by throwing with contempt the ring forceably placed on her finger into the chimney ) made sufficient indications of her dissent, even then when the Frowns of many angry and menacing foreheads would have restrain'd her from the freedom of a *plenary Contradiction*. The matter being thus done, he knew well enough that it was not the loosing of Virginity but conjugal aliyanace that made a Marriage: for it is a rule of law that *nuptias non concubitus sed consensus facit*, he was also sufficiently perswaded that the words of a Priest do not operate any thing as to the Celebration of Marriage without the lawful consent and mutual union of wills, and that the Priest could do no more without her consent in this case then if *Poncio nullo* had acted the part of a Priest, yet he being desirous as I said before to Cover his offence, and perhaps stirred up some what by his disappointed passion, to consult with malice that restless Hag and Mother of calumny, he endeavours by publique impressions of Calumnious jactitations, at several times and in sundry places to make the world believe that she was his Lawful Wife, and to insinuate it vwith the greater *verisimilitudo* into the beleef of the *popularesco* he caused several let-

ters to be vvritten intimateing a pretended Marriage, at last he brings her to the Tcgvn poorer then a Carthusian and leaner then a *Romish* lent, vvith intention to keep her secretly within his povver untill he might assure himself of her affection, but at her first entrance into the Tovvn she vvas by Gods providence so happie as to meet a friend of hers, by vvhose happie assistance and the Lord of *Arans* favour and prudence she vvas immediatly restored to liberty, and then she began to act her Part. *liberis habenis*, and in the first place the same day she came to T'ovvn maks a protestation against the force and Injuries offered her in *Authentique* forme of Lavv, which as it was not possible to do it sooner, so she could not well have delayed it longer.

Sir: I know that Calumny is less regarded since it became so commonly interwoven in the dialect of these times, and that it was never very operative with wise men, where it was not accompanied with an opinion of sincerity in the Author, and I likewise know that this Calumny of jactitation of Marriage with my Client, is but a lying imputation proceeding from the disappointed ambition of him, who is but a profligat person, whose breath is sufficient almost to infect the aire and stayn the glory of the stars, yet my Client seeming thereby to be sullied in her Credit, which touchesh her in in the tenderest and most inward part of her concernment, and being as unwilling to conceal her misfortune as she was unable to lye under the imputation of so foul a Calumny in this Age, wherein most eares are as Credulous as his tongue is licentious, applyes her self to this honourable Court, as the proper and free streaming Fountain of Iustice, wherein she now casts her self to wash out the stains of her wounded reputation, and hopes that the Defendant being overwhelm'd at last under the burthen of his Crimes will find the Catastrophe of his pretensions partly in the doom of this Court and partly in the just severity of the Common Law.

Sir I have faithfully, though not curiously guided you by the Torch of truth into the knowledge of the matter of fact, and in my relation thereof I am confident that I have not abused any thing but your patience, with which also I have complied, in the omitting of many aggravations more then circumstantial against the Defendant, and though I should now by a cleer shewing forth of evidence confirm every particular of what I have presented unto you, yet to recompence in some sort the length of my Narrative with the brevity of what I am to speake of, we are resolved to apply the evidence to no more points of controversie then are absolutely necessary to determine the two great Articles viz, that there was not, nor could be any lawfull marriage contracted or celebrated between the Actrix and the Defendant from the time of the *sequestration* and abduction untill her restitution to liberty in regard of the force and fear which continued all that time upon her, and that he is guilty of a scandalous jactitation of marriage for which he deserves to be first chastised with the severest rodde of Ecclesiastical discipline, and then to be transmitted a *Consistorio ecclesie ad pratorium Regis. i. e.* from the Court Christian to the Kings Bench.





The Case of *Mrs*  
*MARY WARE*, and  
*IAMES SHIRLY*;

As it was argued , Relating to the several points of Law  
incident unto , and emergent there out

*By*

*Dudley Loftus* LL. D. in the consistory Court  
before *Dr: Willam Buckley* Chancellor  
to the Arch Bishop of Dublin, in  
*Michaelmas* tearm 1668.

---

D U B L I N.

Printed by *Benjamin Tooke* , Printer to the Kings Most Exel-  
lent Majesty for *Samuel Dancer* Bookseller in *Castlestreet*.

m  
ou  
th

co  
an  
du  
un

he

th  
all  
du  
bi

3  
hi  
ar

to  
fo  
at  
A

SIR,

**W**E have now reduced the matter of fact to its true species, and you may be pleased to observe, that we have proved with legal and sufficient evidence so much thereof in this cause as is requisite to the founding of our intention, for we have established beyond all contradiction the verity of the following particulars.

First the abduction of the Actrix by the Defendant and his complices *vi armata* on the Twenty Seventh of *January* 1668. and that the *Actrix* or the *vim passa* from the time of that abduction untill her restitution to liberty in this City, continued under the force & terrour of the Defendant and his complices.

Secondly, That during the continuance of that force upon her, she was most barbarously Ravisht by the Defendant.

Thirdly, That immediatly upon her restitution to liberty she did protest in due form of law against the said force, and all Acts whatsoever done or suffered by her to her prejudice during that inter-space of time as invalid, and of no force to binde an obligation upon her.

Fourthly, That the Defendant hath in a most vain glorious *Jaſitation* boasted that a marriage was Celebrated between him and the *Actrix* during the time she was under that force and terrour.

I should now speake to such points of Law as are convenient to be applyed and fitly adjusted to the severall matters of fact so proved; but in regard some circumstances of what was asked during the force seems to rest upon the Testimony of the *Actrix*, I shall first of all bring good Corroboracion thereunto  
E 2
from

from undeniable Authorities of law, whereby it will appear in great visibility that <sup>οικουμένη μαρτυρία</sup> her own Testimony is sufficient evidence in that or the like cases. My first argument carries with it the weight of an undeniable Authority, which is the opinion of *Hyppolitus de Marsiliis* a famous Jurist *tractatu de fide iussoribus* p. 614. num. 178, who saith *de damno dato statur sacramento damnum passu*.

Secondly, I know that a single opinion is usually accounted but the superficial glittering of a slight argument, I shall therefore add unto the former Authority the attestation of *Panormitan. extra de his quæ vi metusue causa fiunt* Cap. ult: where we have these words, *probatâ violentiâ res amissæ probantur per juramentum, & secuto petentis juramento fit condemnatio*.

Thirdly, I shall make use in the next place of the Authority of *Chassaneus* in his commentaries in *Consuetudines Burgundie* p. 61. where he expressly declares that *Statut juramento Virginis contra deflorentem*, which words are so apposite and compleat that they need no addition, and so evident as that they want no interpretation.

Fourthly, I shall urge another Authority as cleer and as full as any of the former, but of more assured determination, and so powerfully convincing that there can be no evasion from it, and that is taken from the Sacred leaves of Holy writ, *Deuteronomy* the 22th and the 24th where *Grotius* in his annotations referring to his book *de jure Belli ac pacis lib. 2d. Cap. 1. 12.* saith *lex Hebræa puellæ de vi illata in agro credi vult*.

Fifthly, Though so cleer and full Authorities as I have premised need not be supplied by former presidents or justified by instances of former judicial decisions; yet because examples are indeed the life and light of natural reason, and are the best fortifications in all controversies of this nature, I shall produce one or two presidents, the first is the case of Bishop *Januaris* 2. q. 1. Cap. *imprimis* (.) *Gloriosus*, where *Gloriosus Comitatus* was

was ordered by decree, to restore and make recompence unto Bishop *Jannarius*, whatsoever he should prove, by his own Oath, to have lost or suffered whilest he was under force and terrour, *quicquid prædictus Episcopus per violentiam atq; infecutionem ipsius expendisse, vel damnum pertulisse, dato sacramento firmaverit eidem episcopo restituendum condemnnetur*, where you may observe the very Image of our case, for the *vim passus* is admitted to prove his wrong and interest meerly by his own Oath, and the reason is well rendred in the gloss, *hoc ideo est, quia res talis aliter nequit probari*, to the same purpose you may consult the *Code de fide instrumentorum l (.). ultima.*

Sixthly, Again you have another the like case among those which are termed *casus longi Bernardi*, extra de *his quæ vi metu sue causa fiunt cap. super eo*, in these words, *quidam dicebat se spoliatum fuisse a quibusdam adversariis suis per violentiam, convenit illos in judicio, lite contestatâ, probavit solummodo per proprium juramentum, singula quæ amiserat, sed de violentia sibi illata, probavit per testes, & sic condemnati fuerunt*, and this condemnation was afterwards confirmed in the decretals by *Gregory the Ninth*, I shall add no more for proof of this point, for whatsoever is offered above the heaped measure of a plenary probation is to be esteemed as no more then a learned extravagance.

So much for the clearing of our evidence, there is one thing more which I must offer to consideration before I proceed to the main decisive points of Law, and that is the justification of our proceedings.

I know no objection of moment that can be raised against the regularity and sufficiency of our proceedings in this cause, yet to answer the greatest Cavill that hath been made against us, I must take notice of what Doctor *French* hath spoken *proad litis ordinativa*, I conceive it was a vast degeneration from ancient and Canonical practice, that he should have had admision

sion to speake in the behalfe of the Defendant not onely pronounced Contumacious, but also excommunicated if not outlawed, I do not mention this so much by way of complaint, as to put you in mind of what he said in a word or two, for though he spoke often yet he started but one objection, and that was onely to oppose the manner of our proceedings against the Defendant for that he was not personally cited, this objection he often retrived and as passionatly urged it against us, and no wonder, for it seem'd like *Sampsons* lock wherein his whole strength lay, it hath been formerly dissheveled, and it is now to be cutt off by a total abscision, to the which end I shall bring it to the test of Law and reason.

I shall never oppose any thing which I think is true, and therefore I must not deny so refulgent a truth as is the necessity of a Citation in ail judiciary proceedings at least between party and party, which is not onely founded in the law of nature, but also by all other lawes owned and approved of as *fundamentum iudicii*, for which reason the *Clementine Pastoralis de sententia & re iudicata* declares in the case between Henry the Emperour and Robert King of *Sicilia* that *sententia dici non meruit quæ a iudice in absentem nec citatum legitimè, ac inauditum, & per consequens indefensum lata fuit*, which doctrine is also most cleerly expressed 33. 92. cap. *secularis* & 36. 96. *Capite multorum*.

But whether a personal Citation be necessary in all cases or particularly in this, is the question, for resolution whereof in the negative, I might urge the indulgence of the law *ff. de Excusationibus* made by *Antoninus Augustinus*, which gives way to Cite persons *personaliter aut domi sue*, which is as we use to say personally or by a *viri & modis*.

It is apparent upon inspection into this law that I do not misse a lledge the words, and that they sound cleerly consonant to this

note; that in calling of persons to Judgement we may choofe whether we will Cite them personally to appear, or Summon them in by a *viis & modis* for the words are *alternate* NOTE: WHEREBY IT SEES THE OBLIGATION *personaliter aut domi sue* and in *alternatives*, it is well known that the debtor, or he who is to performe the obligation is to have his election, for saith the law *si plura alternativè seu disjunctim adscripta sint unum adimplere sufficit, ut obligationi satisfactum videatur.*

But for as much as I should seeme to strain this Law too far and urge it further then our Case requires, by scrueing up the sence thereof *ad montem literæ* ( for it would be as absurd that the person should not be personally Cited where he may be had, as it would be irrational to require that he should be personally summoned where he cannot be found: I will therefore supply out of the principles of right reason the interpretation of the Law where it seems defective, and accommodat the words to a perfect understanding, and directly to our proper Case, by distinguishing between *alternatives of simple Election*, and *alternatives of preorditad disposition*: an alternative of simple Election is where a person or persons obliged to performe any two or more things, may, without being Confined to any order of Election make choise of which he will to satisfie his obligation, as for Example if I oblige my self to pay unto *Titius* at a certain day, an hundred Barrells of wheat, or in lieu thereof, an hundred pounds sterl: it is then in my Choyse to pay which I will, and by the payment of either I am totally disobliged.(.) An alternative of preordinat Election is when the payment or performance of one thing or another may satisfie the Debt, yet so as that the one is primarily intended and required, and the other is not sufficient unless subsidiarily upon the failing of the former, as for Example, by the Civil Law since the Epistle of *Divus Hadrianus* (the Emperour and not Pope Hadrian the 4th as Fuller in his Ecclesiastical



Ecclesiasticall History misapprehends ) became of force, the Creditor may sue the principal Debtor, or his sureties, but cannot sue the surety *nisi excusso principali* unless the fideiussor hath renounced the benefit of that Epistle, so it is in our Case, vve had liberty to Cite the Defendent personally or by a *viis & modis* but vvere limited by such course of preordinat Election, as that vve could not Cite him by *viis & modis* so long as we could have served him personally, so that *Panormitan Capite causam Extra de dolo & Contumacia n. 5.* saith *Citatio debet primo fieri in persona si possibile est, alias fit domi*, and therefore *Histien/sis* quoted by *Panormitan/sis*. eodem saith, *si in provincia est debet citari personaliter ubicunque reperitur*.

The question therefore vvill be vvwhether the Defendent vvere to be found or no for if he were not to be found in *Provincia*, it is most certaine that a *viis & modis* vvithout any personal Citation may be deemed sufficient and legal enough, as I shall prove by the *subsequent* allegations vvwhich are so cleer and manifest in the point, that no sophistry or prevarication can vvrest them to another sense.

I shall begin vvith *Boubick Capite causam. Extra. de dolo & Contumacia*, whose authority in this case is an evidence of uncontroulable Certaintie, he saith *si aliquis non potest inveniri personaliter ad citandum in provincia, sed bene extra. tunc non est necesse eum personaliter citari, sed perinde est ac si non possit alibi reperiri*.

If you will cast more weight into the scales you may add hereunto many other Authorities as that of *Panormitan. de dolo & contumacia cap: ultimo n. 1. citatio fit ad ecclesiam citandi quando non reperitur*.

Again the same Author affords another Testimony to the same purpose as cleer as the former, *capite inter quatuor. de Majoritate & obedientia. pro Citato habetur ille qui se occultat ut non possit Citari*, and this agreeth with the Doctrine of the Decretal. *cap: quoniam (.) porro, ut lite non contestata non procedatur*,  
Which

Which is so cleer that it will leave no place for further doubt or scruple ——— porro speciales cause possunt occurrere in quibususualiter est aliud observandum: ut verbi gratia: si super allicujus Electione, vel copula maritali quæstio moveatur: tunc etenim ne propter longam moram in spiritualibus & temporalibus patiatur ecclesia læsionem: vel viro seu mulieri fornicationis occasio præbeatur: in huiusmodi casibus, si contumax apparuerit is in quem actio fuit dirigenda seu quia peremptoria citatione recepta, venire contemnit: seu quia malitiose seipsum occultat: seu quia impedit ne possit a leni citatio pervenire: testes, lite non contestata, sunt merito admittendi, & nihilominus si de causa liquat ad diffinitivam sententiam procedendum, hence the gloss upon the word impedit observeth, talis habetur pro citato denunciatione facta publicè ad domum suam, and his observation is there illustrated by several quotations Cap: ex tua, de cle: non resid: de dolo & contumacia cap: ult: and for further illustration he there saith & ita sufficit quod publicè edictum proponatur ad domum suam vel ad ecclesiam.

Furthermore I conceive that where a *litis contestation* is not necessary, there, a personal Citation for one vvho is *extra provinciam* is not requisite; but in cases vvhere there is a dispute de *federe Matrimonij*, there is no necessity of a *Litis contestation* as appears in Bonhick de *lite non Contestata*, Capite. quoniam frequenter, by an argument taken a *sensu contrario*, for there he saith aut non agitur de *federe Matrimonij*, sed de alio casu puta adulterio vel huiusmodi, & tunc non est procedendum lite non contestata, vvhencc vve may vvarrantably conclude, that in this case vvhere a matter of marriage comes into question, vve may proceed *lite non contestata*, and therefore vvithout a personal Citation.

Moreover *ubi mora sit periculum allatura* there is no necessity of a *Litis contestation*, but such a case as this vvill not suffer delay, for the lavv doth suppose there may be *periculum fornicationis*

onis in case a young woman in *fermento juvenis* should remain unmarried until the person were Cited personally, for vvich reason saith *Boubeck tit & cap. iisdem paulo inferius in causis Matrimonialibus & ipsas tangentibus indistincte procedi potest lite non contestata ad receptionem testimonii*, the like you may see in the *Clementine dispendiosam de judiciis*.

Furthermore that I may baffle all opposition that can be made against us in this point, suffer me to add the Authority of celebrated *Ruckerus* in his *consilia Matrimonialia* vvith his reason annexed, *non est opus ut requiratur absens extra provinciam seu civitatem, quia sic esset processus in infinitum*, and for this opinion he there quotes *Bartholus* and others.

This opinion hath as you have heard the suffrages of the best Doctots and Glossaries, I shall therefore make no further addition in Corroboration thereof, for I think I have more reason to beg pardon for having said so much, then to say any more to prove that a personal Citation is unnecessary in this case; I having novv removed the onely objections that could be surmised against our evidence and proceedings, I shall proceed to the main decissory points of lavv, and enter into a more close and exact discussion of the Buifness, and in the first place I shall speake briefly *de vi & metu* and shew you first how they operat upon the vvill, secondly vvhat operation they have in this case as to point of lavv and impediment of marriage, as to the first give me leave for your better satisfaction to recall into your memory some Philosophical notions vvhereby the violence offered to the vvill may be the better understood.

The principles of every thing may be reduced to a tvvofold difference, some are intrinsical as matter and form, some are extrinsical as the efficient and end.

Now, whatsoever belongeth to any thing according to its intrinsick principles cannot be termed violent, but onely that which

which ariseth from principles extrinſick, ſo that there is a two-fold extrinſick violence, one in reſpect of the efficient, and another in reſpect of the end, that which is violent in regard of the efficient, may be inſtanced in the motion of a ſtone or any heavie thing upward, that which is violent in reſpect of the end may be reſembled by one who being in imminent danger of ſhipwrack caſts his goods over board, being not violentated by any one *per modum efficientis*, but onely *per modum finis*, for that he would avoid the danger and ſo preſerve his life.

Now between theſe two ſorts of coaction there is a great difference, for coaction which is *per modum efficientis* is ſimply violent and involuntary having nothing of free will, as a ſtone in its projection upwards againſt its natural inclination.

But coaction which is *per modum finis*, becauſe it participats ſomewhat of that which is voluntary, is not ſimply or abſolutely violent, but onely *ſecundum quid* and ſuch a violence is called by the Philoſopher *voluntarium permixtum* and as there is a twofold coaction ſo alſo is there a twofold agent capable of compulſion, the one natural, and that onely can be compelled *per modum efficientis*, as is a ſtone, for ſuch an agent, when it doth not act by coaction, acts by a form ſimply determin'd to one thing, the other is a free agent and that cannot be violentated nor compel'd *per modum efficientis*, but onely *per modum finis*, and ſuch a coaction may conſiſt with liberty ſimply, this diſtinction you have in *Ariſtotle* in the 3d. of his *Ethicks*, where after his defining what is *violentum*, he gives an example of that which is violent *per modum efficientis*, as when the wind carrieth away a man againſt his will, an example of that which is violent *ratione finis* he ſubjoyns there viz, ſuch things as are wrought either by the fear of greater evils, or the love of a greater good, and of this ſecond not of the firſt doth he doubt whether it be voluntary or noe.

Now the will which is a free agent hath a twofold act viz,

an immanent and interieur act as that of nilling and willing, and an exteriour imperat act as it is termed by the Schoolmen as the act of moveing the bodily members in *Locomotion*, as to the first act the will cannot be compelled by any thing *per modum efficientis*, but *per modum finis*, yet as to the exteriour acts it may be compel'd *per modum efficientis*, for it is most cleer that one may move the members of another mans body against his will.

I have now made it appear how the will may suffer violence by fear and force, in the next place I shall offer to consideration what operation *vis & metus* have in this case as to impediment of marriage. I shall now handle them apart, and first *de metu*, for *quod metus causa gestum erit ratum non habeo* saith the *Pretor ff. quod metus causa gestum erit l. 1.* but because *Labeo* saith in this law, *metum accipiendum non quemlibet sed majoris malitatis*. I will therefore first define fear by the common suffrages of Doctors and the Glossaries to be *instantis vel futuri periculi causamentis trepidatio*, and then distinguish thereof thus, there are three kinds of fear according to *Zasius Institutionibus de actionibus (.) quadrupli*, the first is a Concussive fear which proceeds from threats, and such was the fear that possessed the mind of the actrix when the Defendent and his complices breathed out menaces to carry her to *Galway*, or to transport her into *France* unless she would submit to his desire.

Secondly, an impressive fear which the Schoolmen and some Lawyers term *metus facti*, as when blowes are given or one is in restraint as my Client was when guarded in the time of her abduction by the Defendent and his *Marmidons*.

Thirdly, a compulsive fear, which proceeds a *vi armata*, and this was the terror that affrighted the Actrix, so shewas first of all surprized and beset in hostile manner by eight armed Horsemen, and by them or most of them guarded in all places from

from the time of her said abduction untill her restitution to liberty, with swords and Pistols.

Thus much of the definition of fear & the several kinds thereof as observed by *Zafius*, I am now to shew you the operation of fear as to the annulling and impeding several acts & particularly that of Marriage; fear excuseth a man from the tye of a regular profession, in so much that if one through fear be made to enter into religion he may freely return to his former secular condition *capperlatum extra de his quæ vi metusue causa* where *sunt Barnardus Summus* up the case thus, A certaine Noble man holding his Wife in suspicion Commanded some Souldiers under his Command that they should carry her to a Wood and there put her to death, They accordingly bring her to the Wood, but the sword being drawn to execute that Command, the Souldiers moved with a generous & pious Compassion tooke pitie on her, and spared her life on condition she should betake her self to a Monastery and there assume the habit of a Nun; whereupon she is led into a Monastery, the Knight her husband sent two Bishops to the Monastery to impose on her the Veyle; the Bishops taking into their grave Consideration, that she was a young woman and had a young Son, grew suspicious of her change of life; they take her aside demanding the reason of her transition into that State of life, she therefore declaring the whole matter in order, told them that it proceeded meerly from feare of death; and that as soon as she could she would return into the world, the one of these Bishops that he might seem to satisfie her husbands cruelty feigneth the putting on the Veile upon her, after wards this Knight dyeth, the Wife then immediatly leaves the Monastery, and takes another husbands wherefore the Bishop of the Diocese at the instance of the Nuns Excommunicated her, the injured Lady insinuates the matter to the Pope, whereupon his Holyness delegats a power to certain

tain Judges of absolving her & her husband from the Sentence of Excommunication, she taking an oath *eorum parere mandatis*, and that then they should call her, the *Abisse* and *Nuns* before them, and if it should appear by lawfull proof that she had entred the Monastery not through fear of death but spontaneously, or that notwithstanding she had entred by fear of death, she had ratified her profession after the decease of her Husband, that she should be forced by Ecclesiastical censure to return into the Monastery, otherwise not, whereupon the said *Barnerdus* makes this observation, *votum timore mortis emissum non tenet.*

Again this fear excuseth a man as to gifts promises, or release of actions by him made, in so much that if a man through fear gives, promiseth or releaseth, he may recover forbear or repeat *Eod. Cap. 2.* again fear excuseth from the obligation of an Oath for these are the words of *Panorm. juramentum metu Prestitum non est obligatorium, Cap. significavit de eo qui duxit &c.*

Furthermore a man is excused by fear a *renuntiatione sui juris*, for whosoever through fear renounceth a dignity or office, he may lawfully enter into it again notwithstanding any such *renuntiation eod. ad audaciam*; and for that judged cases in law are the best interpretations thereof, you may be pleased to take notice out of the Archives of the Registry of *Armagh*, of what was decreed in the Church of *St. Peter* in *Droghedagh* Anno 1553. by a provinciall Synode even in the time of *George Dowdall* Archbishop of *Ardmagh* and Primate of all Ireland concerning those Priests and Pielats who had celebrated the Sacraments and other divine offices according to the rites of those who were then deemed Hereticks, *diffinitum est quod omnes supradicti qui non voluntate sed metu hoc fecerunt admittentur ad gratiam & absolutionem vid Canonem 6.* whence it appears that even



even Priests and Prelats may be excused by fear from such acts as are deemed very great transgressions of law.

Lastly to come directly to our case, If a man or woman contract marriage through fear they are excused a *Contractu Matrimoniali* and are not thereby obliged.

The Canonists hold that there are three things considerable in marriage, *fides, proles, & significatio unionis inter Christum & ecclesiam*, Fidelity, Issue, and the mystical signification of union between Christ and his Church, now every one of these three are overthrown or most likely to be hindered by fear giving cause to a marriage, first the signification of the foresaid Union is taken avay by fear, for as Christ assumed human nature voluntarily, so marriage which signifieth that Union, ought to be voluntary, and therefore void of fear, *ut signum correspondeat signato.*

Secondly fear is commonly an hinderance to issue in as much as that for the most part *propter displicentiam ortam a timore non intendunt procreationi proles* as is observed by *Antonius Genuensis* in his *praxis Neopolitana* p. 278.

Thirdly fear is repugnant to fidelity which is the great preservative from Adultery, for as the last Cited author writeth *propter metum seu invitas nuptias de facili conjuges labuntur in adulterium, nam quod quis non diligit facile contemnit.*

Moreover that nothing may be wanting to way down the ballance on our side, I shall cast in over and above the former reasons and authorities, the expresse opinions in point of such other Lawyers, *casuist's* and Schoolmen as will give a more ponderous then needfull addition to what hath been said, to prove that *timor inique incussus* is a *diriment impediment* to marriage, be pleased therefore to hearken unto *Petrus Anchoranus* in whose opinion you may safely fix your judgment *extra de his que vi metusue causa fiunt. cap. absolutionis, omnia gesta per me-*

*sum sunt nulla*, his reason is this *quia metus continet in se dolum* *dolus autem dans causam contractui reddit eum nullum* as you may see l. *eleganter ff. de do. so.*

So that Azpilcueta the Spanish Casuist concludes well p. 249. in these words, *aunque los sacramentos que imprimen character* *Comoil baptismo, valgan, però il contrato del Matrimonio Contraydo per temor, no vale nada, proque anzi lo ordinò la yglesia per muchos respectos* and a little after he subjoyns as followeth *el Miedo obra esto no solamente, quando el Constreñido fingió Consentir y no consentió en el casamiento, però aun quando consentió verdaderamente*, St. Thomas also is of this opinion, 4. dist 19. I shall therefore Conclude with Malettus whose words are as pertinent in this behalf as his authority is Competent pte. 1. p. 586. *Matrimonium metu cadente in constantem virum iniuste incusso contractum jure ecclesiastico irritum est*, this conclusion is cleerly deduced from several places of the decretalls, *ex capite cum locum, ex cap: cum veniens ex cap. de Consultatione de sponsalibus*, and herewith agree the most famous of the Schoolmen Thomas of Aquin: in 4. dist 19. *questione unica Articulo tertio*, Banaventure on the same place *Art unico q. 1. Richardus Art: 2. q. 3. Durandus q. 2. Paludanus q. 1. Art: 3. Major. q. 1.* and the reason of this Conclusion is recited by Incognitus on the sentences lib 4. Dist: 3. & 31. out of the decretalls *de sponsalibus cap requisivit*, in these words, *quia invita nuptie difficiles exitus habere Consueverunt.*

1. ob: Perhaps it will be objected against us in extenuation of the fear alleged and proved by us, that the Defendent and his Complices did not draw their Swords nor make use of their Pistolls, to this I answer that the evidence given by us makes it apparent that they drew both their swords and Pistolls but put the Case *in prejudicio veritatis* since *prejudicio veritatis* that they had made no use of their swords nay that they had layd down their

Arms

at her feet, let it be consider'd what we finde written l. *quoties* Par:graf ho *qui in potestate & l. in delictis in principio ff de noxa* the words run thus, *ibi sufficit terror armorum ut videantur deieisse, idem dicendum est licet portans arma ea deponat, cum enim possit ijs armis uti nihil eorum depositio Confert.*

Ob. 2. It may peradventure be further objected, that it is not every fear that is a sufficient impediment to Mariage, and this I grant to be true in several instances, as for example, if *Metus* be not *incussus a causa libera ad extorquendum consensum*, but a *causa naturali intrinseca*, for which reason a Marriage Contracted by him whom the Phisitian tould he should dye unless he did sudden'y marrie a Wite, is good and valid, because the fear that forced him upon marriage did arise from a natural intrinseck Cause.

Secondly, *Si iuste incutiatur metus a lege vel a Iudice for capite ex literis, Extra de sponfalibus* we read *si metus iuste incutiatur a lege vel a Iudice Precipiente Matrimonium, tali metu minime infirmatur matrimonium*, and there is also the same reason *Si metus iustus incutiatur ab homine privato*, for if a father shall threaten the Ravisher of his Daughter to accuse him Criminally upon the Statute of King James of force in this Kingdom, unless he take her to Wife, in this Case *metus censetur iuste incussus*, and a marriage so Contracted and consummate is firm enough though it proceeded from fear of an accusation, but these cases of *iustus metus*, and *incussus a causa libera* do not come within the State of our Controversie, and therefore conclude nothing against us, nor do they require any further answer then that the fear raised in the minde of the Adrix was an unjust fear *ex parte defendantis*.

Ob. 3. It may be objected that weapons not drawn out into use are not sufficient to raise such a fear as may *cadere in consuetudinem virum*, for answer hereunto, it will be necessary first

of all to declare what manner of fear it is that may *Cadere in  
fortem virum*, which I shall do in the resolution of *Malettus*,  
*ad metum cadentem in fortem virum reduoitur metus mortis vel  
mutilationis, vel fustigationis, atrocis cruciatus, vel incarcerationis,  
vel exilij vel servitutis, vel stupri, amissionis statum  
honorifici, amissionis omnium bonorum vel magnæ partis, vel rei  
pretiosæ vel metus infamie tam juris quam facti, Malettus par-  
tet. malleatione 56. bractea 44. p. 539. Col. 1.* but to give a more  
direct answer to the objection I shall betake my self to the  
words of the Law l. 3. *in principio, & quia armati ff. de vi & vi  
armata* the words are these, *metus armorum cadit in  
constantem virum, licet portans arma iis non utatur*, again  
a less fear then usually falls in *constantem virum* would  
voyd the Marriage of my Client, by reason not only of  
the imbecillity of her Sex but also of the frailty of her tender  
years, the Law doth much indolge imbecillity and frailty for  
which reason women *ob fragilitatem sexus* may notwithstand-  
ing their obligations to Creditors, plead the priviledge of the  
*Vellejan Senatusconsult* for their immunity, as also *minors ob im-  
becillitatem ingenij*, if they become bound for the payment of  
debts may plead the advantage of the *Macedonian Senatuscon-  
sult* which sets them free from any such obligation, both these  
concurr'd in my Client *fragilitas sexus* and *imbecillitas ingenij*  
at the time of her abduction she was a Minor and under the  
age of Sixteen years, and therefore a less fear then what may  
*Cadere in constantem virum* is sufficient, *Antonius Genuensis* de-  
clares his opinion thus *Minor metus excusat magis mulierem quam  
masculum quandoquidem fragilior est ratione sexus Cap. indignan-  
tur 32. q. 9.* but *Abbas in dicto Capite cum locum* saith, *ex parte  
mulieris requiritur metus qui cadere potest in constantem mulierem,  
& Minor metus, quando concurrat in femina tenera etati cum  
concurrerent duæ qualitates, sexus & etatis, vide praxin Curie Ar-  
chiepiscopalis Neopolitane p. 278. Anno 3.*

Ob. 4. It may also be objected that our former conclusion doth suppose a false foundation, and that there can be no such *metus* or fear as may *Cadere in sortem virum*, for that *Aristotle* in the third of his *Ethicks* Cap. 8. saith *Ἀνδρῶν τῶν ἁφ' ἑαυτῶν ἄτακτοι* i.e. *fortioris esse in terroribus vacare terrore & perturbatione*, and if no fear or terrour can befall a valiant man, how can such a pretension of fear be any impediment to marriage.

Answer. To this objection, I shall answer first as a Philosopher, Secondly, as a Critick. my first answer is agreeable to the ancient Greek Scholias, and the latin Modern Comentaries viz, that *Aristotle* did not hereby require that a constant or valiant man should be totally exempt from fear, but that such a person should not fear any thing but what right reason should dictate unto him as worthy of fear, nor in a higher degree then prudence should rate, now certain it is what Doctor *Parisiensis libro quarto* saith *dicitur recta ratio plus debere timere mortem vel Carcerem quam actum Matrimonij alias displicentem*, my second answer shall consist chiefly in the true recital of *Aristotles* words in the Greek and a true translation of them the Greek words therefore are these *Ἀνδρῶν τῶν ἁφ' ἑαυτῶν ἄτακτοι* *ἰσχυροτέρως ἢ ἐν τοῖς ἀφανέσι* id est *fortioris videtur esse in improvisis terroribus vacare terrore & perturbatione quam in perspicuis*, the words therefore as you may be pleased to observe in a true recital and a faithfull translation, do not run by way of opposition absolutely prohibiting all kinds of fear, but comparatively set forth that a valiant man is less to dread sudden and unexpected surprizes of fear, then apparent or expected dangers. I confess that *ἰσχυροτέρως* rather may be wanting in some Copies, yet the particle which cannot relate to any other word then *ἰσχυροτέρως* or to one of the like import and would be insignificant if the other were not either expressed

or implied, justifies the copies where it is used to be most perfect and authentique, hence it followeth that *magis* or if you will not allowe that word in the text, then the particle *magis* is to be rendred rather *per magis comparativum* then by *potius correctivum*, and not as it is taken *Galatians 4. 9.* where *Erasmus* saith that *magis* or *Magis hoc loco correctionem verius habet quam comparationem*, the words there are *καὶ οὐκ ἐστιν ὑμῖν ἀνάγκη τὸν νόμον τῶν ἀνθρώπων* nor, as it is rendred *John the 3. 19.* *καὶ οὐκ ἠγάπησαν τὸν φῶς ἀλλὰ τὰς tenebras* men loved darkness more then light, that is they loved darkness and not the light, not comparatively but oppositively, which sence of the word *magis* though allowed by most other translations, yet the *Ethiopick* interpreter renders it in a comparative forme,

צלמח אמברת

yet so as the sence is the same for the *Ethiopick* doth not render the words according to our Greek Copie, *ἐλέγξαντες ἡμεῖς τὰς tenebras ἡμεῖς* dilexerunt homines magis tenebras quam lucem, but thus *dilexit Deus mundum & elegit homo tenebras potius quam lucem* for the words in the *Ethiopick* run thus *אדם ברהם מעא ומט עלם ואפקר* and it is clear that though we may love one thing better then another comparatively, and so may love both together, yet we cannot choose after that manner but we must take the one and leave the other, but by the way to justify the *Ethiopick* translation it is most evident that Greek Authors do use the word *ἄρα* for *eligere* as for example *ἐγὼ τὰ τὰ ἐπὶ τῆς γῆς* I choose this before that, and who so ever reads *Appianus Alexandrinus de bellis civilibus* will find that *ἄρα* and *ἄλλοι* are of like signification where the words *ἐπὶ τῆς γῆς καὶ ἐν τῇ θαλάσσῃ* are translated *Malant servir quam equo cum ceteris jure vivere* but let it be supposed that the word *magis* were wanting in all copies of *Aristotle*, we know it is a rule frequently made use

use off in the interpretation of Scripture; that *positivum non-  
unquam comparative debet intelligi*, as in the Gospel of St. *Mark*  
*Cap. 9. v. 43.* the Greek runs thus in the very same Idiom  
with *Aristotle* *καλὸν οὐκ ἔστιν ἀλλὰ καὶ ἄλλοις καλὸν ὡς ἂν καὶ ἄλλοις καλὸν ὡς ἂν καὶ ἄλλοις*  
where though the litteral interlineary interprets *καλὸν* in  
the positive degree *pulchrum* yet the *Persian* translation ren-  
ders it comparatively by a word of the same sound and sig-  
nification with our comparative better, *בְּדָרָךְ בְּאֶשְׁךָ מְלִיטָה* *melius*  
*tibi fuerit*, and most other translations render it comparatively  
the *Armenian* indeed translates *καλὸν οὐκ ἔστιν* in the positive de-  
gree thus *laitse kets bonum erit tibi*, yet the adjunction of  
the particle *kets* makes up a comparative sentence thus  
*laitse kets bel ikeansn jaipitenits mtanel kan erchois ttern*  
*oinel ertthal i chehen id est melius tibi fuerit mancum ingredi in*  
*vitam eternam quam habere duas manus & abire in Gehennam*, so  
that from what hath been principally said in answer to this  
objection it followeth that the words of *Aristotle* alledged  
against us are to be taken comparatively and not simply prohi-  
bitively viz, not but that a valiant man may fear, but that he  
is to be less fearfull in a suddain and unexpected surprize,  
then in apparent and expected dangers.

*Ob. 5.* It may be further objected that though the *metus* or  
fear was a just *incussus* at first, yet it was not so all the time they  
were together, I shall with a ready answer unload the weight  
of this objection by offering unto your consideration what is  
already proved viz, that she was altogether under the power  
of the Defendent and his complices untill the 2d. February,  
when she was rescued from him in this City which in con-  
struction of law continues the fear, for so saith *Sanchez lib. 4.*  
*disp. 18. Anno 7. durat timoris causa dum durat subiectio timo-*  
*rum incutienti,*

But perhaps if the Defendent were present he would as im-  
pudently



prudently reply her unto, as he hath already falsely alledged else where that she seemed by the indication of some exterior acts at the time of her feigned or pretended marriage to be at liberty, to this I answer that she was there so farr from enjoying her liberty, that it is apparent she was under a great force, which I make good by the words of *Zanches de matrimonio lib. 4. disp. 18. Anno 9.* which are these, *ut autem actus exterior inducat metus purgationem censeaturq; spontaneus desideratur ut omni ex parte significet liberam & spontaneam voluntatem quia si ullam aliam interpretationem recipere possit non censetur purgare metum*, but put the case that as to all exterior acts she had seem'd to be at liberty, this had not been sufficient *purgare metum* so long as the first cause of fear continued, for thus saith *Zanches lib. 4. disp. 18. Anno 7* *durante causa metus, durat metus quamvis in actu exteriori appareat omnimoda libertas, paria enim sunt quod quis compellatur vel compelli possit l. novissime ff. quod falso tutore auctore gestum esse dicitur.*

Furthermore to shew you how little any indications of consent do signifie as to the purging of fear in a case of marriage, I shall collect into as contracted a brevity as I can, some undoubted positions which I find in *Barboza* his *vota decisiva canonica, voto primo*, delivered in a case of this nature debated and decided in *curia Matritensi* between two noble personages viz, *Iudovick* and *Iosepha* which I shall apply in answer to this objection, the positions are these.

1. *Metus antecedens non purgatur per hilarem vultum tempore contracti Matrimonij extensum. Anno. 104.*

2. *Risus in actu Matrimonij contrahendi non est indicium consensu Anno 107.*

3. *Metus praeambulus non purgatur ex cantu & risu puella Anno 127.*

*Metus non dicitur purgatus ex osculo & refectione.*

5. *Per verba sponte facio per metum passum tempore metus prolata, non purgatur metus, sed geminatur, ibid. Anno 8.*

Nay Alciat. goeth farther resp. 5. *idem est si matrimonio contracto subsequatur dotis instrumentum*, but Abbas in capite super hoc de renuntiatione giveth one reason which serves to maintain the truth of all the forementioned positions in these words, *etiamsi puella risit dum desponsaretur raptori eumq; osculata est, attamen ex quo durabat eadem metus causa, praesumitur metu consensisse, & risum illum finxisse*, Bartholus also speaks to the same purpose l. penult ff. de conditione ob turpem & injustam causam, & in l. 2. (ob quod rieto causa. I conceive there hath been as much said already as may serve to take off the force of the objection, yet to evict confession from any ingenious adversary, I will make use of some judgments in the case wherein lyes the sinews of proof for *res judicata pro veritate accipitur*, in the moneth of June 1589. it being then debated in Rota Romana before the most illustrious Seraphino, whether consent was given by the woman, to the man who claim'd her for his wife and urged in proof of a free consent, that she had paid and defraid the expences of them both for their dyet, and that she had made several bargains, and had written several letters unto him wherein she expressed her self to be his Wife, the judgment was, that *nulla fuit habitatio ejus quod uxor faciebat omnes expensas victus tam pro se quam pro viro, nec quod fecerit varios contractus, & scripserit literas viro in quibus gerebat, se pro uxore, cum non esset constituta in plena libertate*, this judgment is related thus in *praxi Curiae Archiepiscopalis Neapolitanae* p. 282. where the Author saith further in these words, & in eadem causa 23. Junij. 1589. *coram Seraphino, neq; fuit habitatio de muneribus focalium hinc inde transmissis propter radicem infectam metus precedentis.*

And

And whereas it hath been urged as a great indication of her freedom from feare that she did declare her consent to Mr. Archdeacon *Rouse* first I say there noe proof made of any consent whatsoever exprest by the actrix to the Archdeacon.

Secondly, I shall shew how little such a declaration of consent doeth operate in the like case, from an Example which we finde in the practice of the Arch Bishops Court in *Naples* p. 282. die. 27. Jan: 1589. in eadem causa Coram Gipsio fuit, neque habendam esse rationem quod matrimonium fuerit Contractum in facie ecclesie ad interrogationem Archiepiscopi, quasi quod metu hoc pacto purgatus conferebatur, here the woman was married, not upon the interrogation of an Archdeacon, but an Archbishop, not in a privat Chamber guarded by the Complices of a Ravisher, but in facie ecclesie, yet was it not thereby to be Concluded that she gave a free consent or that she was void of fear for it was thus declared upon the hearing of the Cause, hoc locum sibi vindicare, si dilucide ostenderetur, puellam adeo in libertate tunc temporis Constitutam fuisse, ut de domo & Civitate ex animi sententia exire ac etiam aufugere potuisset: vide praxim curie Archiepiscopalis Neopolitanae p. 285. but sure I am that the defendent will not dilucide ostendere that the actrix was in so free a Condition in the Chamber where Mr *Rouse* is said to have interrogated her as that she cou'd have gone away from them in plenam libertatem, nor will he prove it usque in Calendas Gracas vel Idus Romanas.

Lastly I conclude with *Baldus* that noe spontaneus act of the Actrix Cou'd pargare metum unlesse she were Constituta in loco tuto si enim non sit in loco tuto semper presumitur metus durare, *Baldus* de his que vi metusque causa sunt it it shall be replied that *Mil-ton* was then reputed locus tutus, I answer that they perhaps may thinke it a place safe enough to secure to themselves but whosoever hath a soule able to set open the windows of sence

sence may easily perceive that it afforded her noe safety from them, for as Baldus saith, *arctatus sic quod non possit aufugere juste timet*, & *qui justè timet non est in loco tuto*.

If it shall be further objected that *Matrimonium Copula Consummatum* may stand valid though fear was the cause thereof, I shall allay the unreasonableness of such an objection with a double testimony to the contrary the one taken from Zanches the other from Reginaldus Zanches. lib. 4. Dis. 18. n. 5. *non solum matrimonium ratum metu contractum, sed etiam matrimonium Copula Consummatum est invalidum*. Reginaldus lib. 31 n. 19 *Copula enim nihil operatur ad validitatem matrimonij nisi adsit Consensus validus & liber*.

If it shall be repyed that *Ostiensis* and *Didacus* as also *Paludanus* in. 4. Dis. 27 q. 1. Art. 4, as they are quoted by *Marcus Antonius Genuensis* p. 281. hold, *verum perfectumque esse matrimonium quando subsecuta est ipsius viri Carnalis Copula etiamsi metu & vi Cognovisse mulierem alleget*, I cannot deny the truth of those words unless I should prevaricat and deny my own knowledge, Nay I shall grant for *corroboration* of them that *Menochius de presumptionibus*. 4. n. 27. saith *hanc veriore esse opinionem*, Yet I shall not yeeld any thing of the cause, but give a satisfactory answer to what is alledged, first by observing the true force of the words which import no more, then that a marriage may be held true and perfect being seconded by carnal knowledge, notwithstanding the allegation of the man that he knew the woman, as being compell'd by force and feare to act with her.

Secondly, By distinguishing between the Case of a man and woman, for as *Monochius* saith *loco citato, in viro coeunte non possit metus aliquis considerari, quia si metus adesset, cessaret desiderium, sine quo frustra adhibetur coreundi conatus*, so that a man being according to the opinion of *Menochius* not subject

to such compulsion, the allegation thereof, upon such hypothesis will not serve his turne, yet a woman being subject to such compulsion of Carnal knowiedge as is Confelt by a.l. Lawiers, it may be alledged by her as an advantagious exception against a forced marriage though seconded with Carnall knowledge, the reason of the difference is, for that *mulier invitata & coacta cognosci potest, at vir invitatus & desiderio carens nec erigere nec coire unquam poterit* saith *Marcus Antonius Genuensis. p. 281.*

But least it may seeme to pass away with a tacit allowance that he had Carnall knowledge of her after the said pretended marriage, we deny that he was with her in *carnis congressu* after his coming to Milltowne, but should I grant that the Case were so, what advantage could the Defendent reape thereby, for put the Case since *prejudicio veritatis* that the endeavours of the Defendent and his wicked Complices had prevailed so far with her as to perswade her that the Marriage had been valid, whereas it was nor, and that she had thereupon voluntarily Consented to a Maritall Copulation, the Marriage would not thereby have been ratified or Consummate the reason is *quia nihil magis consensui contrarium quam error* *Zanches. lib: 4. Diss. 18. n. 5.*

*ob.* It may also be objected that regularly all things *metu facta* may be reputed valid untill rescinded by the action *quod vi metusue causa* or otherwise, and that therefore this pretended Marriage is to hold untill rescinded by sentence of this Court.

To shew the insufficiency of this Argument I must distinguish, between the rule and the Case legally excepted from the comprehension of the rule, for *non ex regula jus sumatur sed ex jure est quod regula fiat*, neither is the rule compleat without the exceptions, whence the *Logitians* say *anomalia addita analogie complet*

*complet regulam perfectam*, therefore I shall confess that there are some things *metu facta* which hold valid and are not to be rescinded at all, insomuch that the ordination of a Deacon or Priest *metu facta* is valid by the Cannon Law as to the Character though not *quoad votum castitatis*, and that there are other things *metu facta* which hold their force untill a legal hearing and rescission, as for example, if *Titius* be forced by Compulsion to sell his house and receive the money, the saie binds him untill he institute his Action *vi & metus* and obtaine rescission thereof by Judgement of the President of the Province *Code de rescindenda actione. l. 1.*

Again a usurious Contract confirm'd by oath may hold, nay cannot be rescinded *relaxatione Juramenti* so saith *Bertachinus Firmanns, verbo Contractus* yet for all that which I have granted to fortifie the objection against me, I must say that *matrimonium metu habitum* is invalid *ab initio* by disposition of Law and needs noe rescission and thus much I am warranted to say by *Navarr, de his qua vi metusue causa fiunt, consil. 4. n. 6, & per cap. cum locum extra de sponsalibus, & cap: significavit de eo qui duxit in matrim &c.*

The reason is, because, where the substance of an Act which proceeds from fear Consists in the liberty of the will there the Act is void *ab initio*, but so it is, that the substance of Marriage abides in the liberty of the will as is confessed by all Civilians Canonists and Casuists who hold that *nuptias non concubitus sed consensus facit*, wherefore saith *Baldus ff quod metus causa l. si mulier. si dos &c metus impedit omnem actum in quo requiritur voluntas spontanea, quia quando substantia actus est libertas voluntatis, actus metu factus est nullus ipso jure*, he adds *aliter se res habet si non requiritur talis actus, nec requirit percipiendam voluntatem.*

If it shall be demanded wherefore *Matrimonium ex dolo contractum* should be more valid then *Matrimonium metu contractum*

I shall give noe further answer then to shew the dissimilitude of both Cases perfectly represented in the words of *Baptista Zilettus*, *quia matrimonium non bonorum accessione sed consensu perficitur.*

One difficulty more may be here interposed upon an instance from the Common Law of the Land which is this, if a man menace me in my Goods, and that he will burn certaine evidences of my land which he hath in his hand, if I will not make unto him a Bond, yet if I enter into a Bond by this terror, I cannot avoid it by Plea, and the reason is saith the Lord Chancellour *Bacon*, because the Law holdeth it an inconvenience to avoid a specialty by such matter of averment, and therefore I am put to my Action against such menaces; though I must confess the Law to be as it is recited in this instance; yet I shall easily deliver myself from that difficulty if it may be so called, by distinguishing between Menaces relating to ones Estate or his person, for the Law is much different in the Case of menaces to ones person, and therefore if I be restrained in my person as my Client was, or threatned with battery or the burning of my house which is a safety and protection to my Person, or with burning an Instrument of manumission which is an evidence of my enfranchisement, if upon such menace or duress I make a deed I shall avoid it by Plea, and upon this distinction the Law varieth as you may see 13. H. 8. 15. and 21. H. 7. 28.

For if a trespasser drive away my Beasts over anothers ground, and I pursue to rescue them, yet am I a Trespasser to the Stranger upon whose ground I came; but if a man assaile my Person, and I fly over another mans ground then am I noe trespasser. Again if a Sherrieff upon a *Capias* falsly return a *Cepi Corpus & quod est longinquus in priso*na, there I may come in and falsifie the returne of the Sherrieff to save my Imprisonment, for it is a *Maxim* of that Law that *corporalis injuria non recipit estimationem de futuro*, yet I confess with Sir *Frances Bacon* in another Case



Cafe that if a Sherriſſ make a falſe return that I am ſummoned whereby I looſe my Land, yet becauſe of the inconvenience of drawing all things to incertainty and delay, if the Sherriſſs returne ſhould not be Credited, I am excluded from any averment againſt it and am put to my action of deceit againſt the Sherriſſ and the Summoners, and therefore it is ſaid upon the like ground that the Law in many Caſes which do concern Lands or Goods doth deprive a man of his preſent remedy and turneth him over to a further Circuit of remedie, rather then to ſuffer an inconvenience, but if it be a queſtion of perſonal pain or tort, the Law will not compell him to ſuſtain it and expect remedie, becauſe it holdeth noe damage a ſufficient recompence for a wrong which is Corporal.

I having now broke thurrough thoſe objections which lay as it were in ambuſh to intercept me in my paſſage, I ſhall proceed further to evince from right reaſon and ſound Authority, that a Marriage Contracted by fear cannot be valid, nay that it is abſolutely void *ab initio* without reſciſſion, and becauſe weak arguments do many times ſtiffen infidelity, I ſhall make uſe of none but what are drawn from the Chiefeſt inducements of beleefe.

Be pleaſed therefore to obſerve a Caſe Cleerly ſtated and determined in the very ſame words by *Panormitan, Cap. Abbas de his quæ vi metusue Cauſa ſunt*, where you may finde theſe words *tenuit ſecundum matrimonium poſt primum meticuloſum, nulla prius petita reſciſſione per actionem quod metus cauſa i. e.* the ſecond Marriage was determined to ſtand good notwithstanding a former marriage inforced by fear, not reſcinded by action, now if the firſt had been valid, the ſecond could never have been adjudged good, without reſciſſion of the former for *Panormitan* ſaith *ſi valuiſſet primum matrimonium non tenuiſſet ſecundum, primo non annullato*, the reaſon is becauſe *matrimonium non poteſt conſiſtere inter duos.*

Again

Again to argue with ampliation to a stronger case, if the Adrix had ratified such pretended marriage brought on by force with her oath, it would not have been valid by law *quia per juramentum non suppletur defectus consensus* and therefore the casuist's say *juramentum sequitur naturam actus supra quam cadit*, & sortitur conditiones illius, and therefore I conclude that as such a marriage is invalid so also would the oath have been, and this is cleer *ex capite qui duxit* &c. Where with agree *Zanches*, *Roderigues* and *Malsttas Malleatione* 56 saying *ideo opus non esse relaxatione juramenti quando matrimonium per metum gravem celebratum fuit addito juramento, quia non opus est relaxatione ubi non est vinculum* there being no need of relaxation, where there is no tye of obligation, so that I conclude with *Dector Parisensis, olim incognitus* upon the sentences that a marriage contracted by a forced consent cannot be ratified by an oath, and that for this reason, viz, that by such oath is sworn *aliquid præteritum, aut aliquid præsens aut aliquid futurum*, somewhat that is past, present or to come, first, if I swear what is past, it is most cleer, that my oath cannot ratifie such a marriage, for I either swear that I did lawfully consent, and so I am perjured, and *periurium non facit matrimonium*, or I swear that I did not lawfully consent, and then would it be les for the validateing of such a marriage.

Secondly if the oath be *de presenti* then I do either swear that I do inwardly from my heart yield a lawfull consent, and then I am perjur'd, and by force of perury a marriage cannot be made good, or I swear that I do not lawfully consent, and then it is much more invalid.

Thirdly, If the oath be *de futuro*, as for example I swear that I will consent unto thee, it is most certainly true that a marriage cannot be contracted by any such consent, because it requires *consensum de presenti verbis vel signis expressu*, as you may

may see *extra de sponsalibus cap. cum locum*, & *capite tua nos*, since therefore every oath must be *de praterito*, *aut de presenti* *aut de futuro*, and none of these can ratifie a marriage contracted by fear, it follows therefore that the pretended marriage being already proved invalid by reason of fear, cannot be ratified by oath:

I need argue no more the invalidity of the pretended marriage from the impediment of fear; or *ratione timoris incussi*, I shall therefore proceed *ad impedimentum vis illate*, which according to *Duarens l. 2. de eo quod metus causa*, is defined *impetus qui repelli non potest*, and is so odious in the Eye of the Civil and Cannon Law, that as all kinde of force is thereby prohibited, so also is there a most apt remedy and provision made for every kinde of force, and so saith *Iohannes Eduensis*, *neque enim vim aliquam possumus inferre proximo, quin ei sit aliquo juris remedio succursus*, and there is great reason for it, for *violentiam Coercere est legi opem ferre*, *cap: sicut, extra de excessu prelatorum*

*vis* or force is divided into these severall kindes *viz: vis inquietativa*, *vis turbativa*, *vis expulsiva*, *vis Compulsiva*. For that which is called *vis inquietativa* you have the remedy of the Interdict *quod vi & clam*, in. l. 1. *de vi & clam*.

If you be infested with the second kinde of force which is *vis turbativa*, if it be in immoveables the Law affords you the interdict *uti possidetis*, if in goods moveable you may have the interdict called *Interdictum utrobi*

If you suffer a disseison, or dispossession by the third kind of force which is tearmed *vis expulsiva* you may have for your immoveables the interdict *unde vi* and for your moveables the interdict *vi bonorum*.

Lastly if you suffer under a compulsive force which is our Case, you properly have the remeady of the action Called *A-*  
*lio*

*Actio quod metus causa* as you may see in the Code and ff. under that title, I having defined force in general and divided it into its severall kindes, I shall now apply my self to the last, which is *vis compulsiva*, and shew what influence it may have on our Case which consists of a Rape and other violence offered or attempted by the Defendent to inforce her to marry with him, but first of all I should my self obliged to describe the Nature of a Rape, and how repugnant it is to the Law, as to the nature of it *tria requiruntur ad raptum proprie*, *nimirum vis illata*, *abductio*, & *ut fiat causa concubitus*, *vel alterius libidinis*, Abduction is Cleerly proved, the *vis illata* is apparent in her unwillingsness and resistance to be abducted, and their violent Carrying her away, and that it was *concubitus causa* appears by the sadness of the event.

1. If there had been noe constraint upon her, and that she had gon away with him spontaneously without the knowledge of her Father it had not been a Rape but *fuga voluntaria* for saith *Candidus*, *requiritur ad raptum ut vis inferatur ipsi vel in saltem ad quos pertinet*.

Secondly. Had she been removed by force from one Roome of an house to another onely *commodioris concubitus gratia* it had been noe Rape, for he that forceth a woman to succumb to his lust whom he findes her in a certaine place without abduction to another place of some distance doeth not properly commit a Rape.

Thirdly. If she be not carryed away *libidinis causa sed redigendi in servitutem*, it is no Rape but *plagium*, or as they say *furtum hominis*, yet it is not requisite to a Rape that there should be *actualis concubitus*, but it is sufficient *ut eo fine fiat*, for saith *Altiſiodorensis*, *voluntas progressiva in actum pro facto reputatur*.

So much may serve to describe the nature of a Rape, I am now to shew its repugnancy to Law, The Law of God prohibits

hibits it under the penalty of death to be inflicted on the Raptor *Deuteronomie* the 22. where it is said in the *Hebrew* Text וְהָחִיק בָּהּ הָאִישׁ וּשְׁבַב עִמָּה וּמָתָהּ *and if he lay hold on her she shall dye*, the words seem at first to be very strict viz. that whosoever shall lay hold on a woman shall dye, therefore it will not be amiss perhaps to explicate the words חָחִיק by the severall ancient and authentique translations of the Bible, the *septuagint* renders it by the word *επιλαβειν*, inforcing her, the *Syrick* hath it וְהִחֲזִיקָהּ בְּקֶסֶדָהּ and shall apprehend or hold her by force, the *Caldy* paraphrase of *Onkelos* expounds it by the word וְהִחֲזִיקָהּ which though translated in the *Biblia Polyglotta* *apprehenderit* clearly signifies to prevail by force or violence as in a Conflict, and so the *Samaritan* Interpreter hath exprest it in the word וְהִחֲזִיקָהּ; and though the Interpreter of the *Arabick* translation agrees with the vulgar Latin *apprehends* yet the *Arabick* word in that place is *عَوَّرَهَا* & *coeruerit eam* which sense it beares in *Raphalengius Golius* and *Gigas*, and indeed the very same *Hebrew* word *Exodus* the 9. and the 2. is taken for a violent detention and is by *Euxtorfius* Translated *vi detinens*, and noe wonder, for that *Abenezra* the *Rabin* expounds the word חָחִיק thus חָחִיק בְּאֵז אוֹ בְּכַף אוֹ בְּחֵטְל אוֹ בְּחֵטְל אוֹ בְּחֵטְל that is to say *by holding them forcibly by the hand or some other member, as if one should hold a dogg by the ears*, *Rabbi Solomon Iarchy* also gives the like exposition of the word חָחִיק in these words אֵין בְּכֵחַ וְהָחִיקָהּ בְּכַף אֵין I shall not render the words too familiar in the vulgar English, yet take them in as modest terms as I can express them in latin, *idest apprehendens eum quasi per pudenda vi detineret eum*, so much (as you may be pleased to observe) an addition to the rigour of the word by a true translation, takes by an equitable abatement from the seeming severity of the Law, and indeed it might have been supposed too rigorous a Law, that a man

I

might

might not have so much as toucht any any woman without undergoing so great a penalty as death. But perhaps on the other side it might be thought a very remiss law that a Ravisher should go unpunisht or at most be punisht only with that which is incident naturally to all men, even to the most innocent, which is death, for the who'e penalty here exprest is **וּבַת** & *moriatur* he shall dye, and so it is in our English translation, but the *Greek* hath it *Αποκτενισθης* ye shall put him to death, the *Syriack* also renders it **נחקטל** he shall be slain or put to death, so also the *Chaldy* paraphrase and both the *Samaritans*, and therefore it may be taken as an oversight in some of those worthy and learned persons who were the publishers of the polyglott Bibles to render it by the word *moriatur*, for it is better exprest out of the *Arabick* Interpreter *interficietur*, for which reason the *Italian*, the *Spanish*, *French*, and *Dutch*, ought to be corrected as well as our English translation, all which follow the vulgar latin *moriatur*, from this penalty and the *Criticall Gusto* that I have given you the true sense of the word **וּבַת** you may clearly perceive that by the *Judaick* law there could be no marriage between the *Raptor* and the *Rapta*.

I shall in the next place instance in the Law of the twelve Tables, where I finde onely a plain prohibition without any penalty subjyned, for *viri ingenuæ femine inferre caveto* is all that I can observe mentioned in the remains of that Law Concerning a Rape.

But the ancient *Roman* Laws afterward sharpened their severity not onely against the *Raptors*, but also all accessories to that Crime, insomuch that they are brought under the penalty of this Constitution, *viz. Conscij verò aut Ministri raptus pena capitali subjiciuntur, siue nolentibus siue volentibus virginibus hoc egerint, parentibus si patientiam præbuerint, ac dolorem compresserint, deportatione plectendis, sed & si quis inter*  
has

*hæc Admissio servilis conditionis fuerit comprehensus, circa  
sexus distinctionem concremetur. vide Arnoldum de Herbols do  
ctionibus* p. 642. and the *Code de rapin virginis* l. 1. this  
law as you may observe by the by concludes worte against the  
treacherous maid of the Actrix, then the figure Bocardo where-  
in she yet deservedly remains.

Nay the Canon Law punisheth not onely Servants but also all  
others, who are any way accessory to a rape with Excommunica-  
tion, infamy, incapacity for dignities and offices, as appears  
by the Testimony of *Gasspar Affice, libro segundo del estado de las  
Lonzellas*, where he saith, *el raptor y los que le dieron favore, son  
descomulgados infames e incapaces de todas dignidades*. Which  
is the reason that by the Lawes of Heraldry whosoever he  
be who ravisheth a virgin, must bear his Escutcheon reversed,  
and it appears further by a rescript of the *Concilium Aurelian-  
ense*, which was Celebrated in the time of Pope Hormisdas, that  
the Church would not allow Sanctuary to Ravishers.

My next instance shall be in the Law of the Saxons, l. 49.  
about the year of our Lord 1032. where it is said in these  
words *gif haw wudewan nyde name gebete wt bewere, gif  
haw meden nyde name gebete wet bewere*  
i. e. *qui viduam per vim stupravit, proprii Capitis estimatione com-  
pensato, nec mitiori Conditione sit qui virgini vim intulerit*, by  
this law also of the Saxons, you see there could be no marriage  
between the Raptor and the Rapta for *gebete wet bewere*  
he must loose his life,

I might also give instance of the ancient Lawes of Ireland in  
force about the same time under the Government of *Brian Bor-  
bain*, what the penalty of a rape was then in this Kingdom  
by that Law, I cannot yet directly finde out, but the effect  
thereof shews that the Law against Rape was most strict in it self,  
& as severely executed, for the *Annalists* say that in the reign of



this *Monarch* a single woman might have travailed from *Thinnithuaid* to *Thuinbliodna* being the whole length of *Ireland* and not meet one that would attempt to Ravish her.

Again what was the nature of this offence at the Common Law and what acts of Parliament have been enacted in Declaration, thereof I need not set forth at large, for it clearly appears in my Lord Cooke the third of the Institutes, Cap. 12. who there refers you to a large Margin with a long and numerous traine of Ancient and Authentique quotations, he there also expressly recites Cases out of the Parliament Rolls, and the Records in the Tower of *London*, to prove, in how great detestation this offence was held in Ancient times and particularly in the Cases of *Isabell* the wife of *John Botiler*, and of *Margaret* sometime wife of *Sr. Thomas Malefait*.

But to be more particular, Rape is Felony by the Common Law, according to the Statute of *Westminster* the 2. 34. and by the thirteenth of *Edward* the first, the Ravisher shall have judgment of Life and member.

Nay this offence by the Statute Law is amplified so far as to become felony in the ayders and abettors as well as the principal, nay so far is it extended in the words of the Lord Cook as to bring accessories aides and abettors under the notion of principals, for these are the words in the 3. of his Institutes cap. 10. if any be present, abetting and aiding any to do the act, though the offence be personal and to be done by one onely, as to Commit Rape, not onely he that doeth the Act is a principall, but also they that be present abetting and aiding the misdoer, are principal also, for proof hereof I recommend to your Consideration 11. Hen. 4. cap. 13. Anno primo Ed. 4. and shall further put you in minde that by the 11. 12. and 13. Jacobi cap. 3. Clergie is taken avay in Case of Rape.

I have now shewed you the nature of a Rape and the repugnancy

pugnancie thereof to the Lavv of God, the Lavv of the twelve Tables the Elder *Roman* Lavvs, the Ancient *Saxon* and *Irish* Lavves before the Conquest of *Ireland*, and to the Common Lavv, as also to the Ancient and recent Statute Lavves.

I shall now draw near to those Lavves vvhich are of most Concernment, to shew that there could be no Mrrriage lavv fully Contracted betveen the Actrix and Defendent by reason of the said Rape and the force that vvas upon her dureing the time limited in the State of the Case, vvhich vvas from the first instant of her abduction untill her restitution to liberty.

To this effect I shall make use onely of the Civil Lavv and Canon Lavv, and the Doctrine of the best and most renowned Casuists as being the best rules by vvhich things of this nature can be vvarrantly determined, and though those replenisht treasuries might afford me abundant authorities and arguments, proportionable to the Offerings made for the Tabernacle more then sufficient, I have made choise of a fevv, yet such as vwill stisly beare up the vvaight of the Cause, and I shall take my rise from the Code. *l. 1. de raptu virginum ( l. 1. )* vvhich book hath as much reason to persvade as authoritie to oblige where it is of force, the vvords are these *raptores virginum honestarum vel ingenuarum quasi pessima crimina peccantes, capitibus supplicio plectendos discernimus.*

In the next place be pleased to consult the *Authentiques collatione 9. tit. 25. novella 43. de raptis mulieribus* where it is declared in these words, *matrimonium inter raptorem & raptam non tenet.*

If there were need of a more enlarged authority with a further addition of reason you might resort to *Simon a Gronwegen vander made. cod de raptu virginum ( l. 1. ) si vis publica raptum comitetur alieue circumstantie crimen aggravent. facinoris*

*facinoris atrocitas publicam vindictam poscit, quæ per subsequens matrimonium nequaquam tolli potest aut aboleri*, the reason which he gives is most prevalent, for it is no less then an undoubted rule of Law, viz: *privatorum Conventio juri publico derogare non debet*. There is an illustrious Example hereof in the registry of the *Low-Countries*, in the Case of *Carolus Audax*, which directly futes with the last recited authority.

If what hath been alledged out of the Civil Law hath not furnished you with inducements, motives and arguments sufficient to decree, that there was not nor could be any marriage lawfully or validly Contracted, between them during the time of the *rapine*, you may be pleased to consider further of what I shall present unto you taken out of the text of the Canon Law, 36. q. 2. cap. 1. are these words repeated with authority in the point, *raptor in uxorem non potest raptam accipere*; but the reason subjoyned is yet more bigg with emphasis. *Quia eorum coniunctio auctoritate canonum sanctorum penitus prohibetur*.

Again Extra 36. q. 2. cap. placuit you have words of no less import then the former allegation, *placuit ut hi qui rapiunt feminas, eas nullatenus habeant uxores, quamvis eis postmodum Conveniant, aut eas dotaverint, vel nuptialiter cum Consensu parentum acceperint*.

The councell of *Aquisgrane* also did not only separate such marriages, but would not allow that ever after they should be man and wife as we find in *Eurhard*, and the same was verified in the Councel of *Melda* which for its warrant quotes a Synodall definition of *St. Gregory* to the same purpose.

Hence it was that *Urban* the 8th of later times ordered *Constitutione sexta, Regula Concellariæ 49.* that in all dispensations *super aliquo gradu Consanguinitatis vel affinitatis ponatur Clausula, si mulier rapta non fuerit*, though it was observed in rescripts of

of that nature long before in *England* and *Ireland*, and particularly in the Case of *Nicholas Dowdall* and *Ellen Dilane* of the Diocess of *Armagh* in the Reign of *Phillip* and *Mary*; for it appears in the Black book of *Armagh* fol. 20, by a rescript from Cardinal *Pole* to dispense with them in a then prohibited degree of consanguinity, he there inserts this Clause in his letters to the then Archbishop of *Armagh* to absolve and dispense with them, *dummodo dicta mulier propter hoc ab aliquo rapta non fuerit*, I finde also the like Clause in another rescript of the same Cardinal, in the behalf of one *Richard Bedleme* and *Matilda Bathe*. The Civil and Canon Law being so expresse in the Case as I have already related, it were needless to offer any thing further of authority, yet to shew the Consent of other approved Authors, be pleased in a word or two to hear the opinion of the Casuists to satisfy you as well in point of Conscience as Law.

*Euannell Sa & Diana tractatu de Sacramentis p. 152. resolutione. 261. saye inter Raptorem & Raptam non potest fieri validum matrimonium, quamdiu est in potestate Raptoris*, and so the Congregation of Cardinals have often declared saith *Diana*.

Herewith also agrees *Rodrigues Lusitano cap. de matrimonio p. 641. non vale el matrimonio entre el que arrebatada y la arrebatada mientras ella esta en su poder*, furthermore *Carolus Mallettus Malleatione 57. Braſtea 14. p. 605. tells us that matrimonium Contractum inter Raptorem & Raptam dum sub potestate Raptoris existit est proffus irritum.*

We have now proved by Authority of Law and consent of Casuists, that there could be no valid marriage between the Actrix and the Defendent: *ratione metus incussi & vis illate*, and particularly *ratione raptus* during the time which passed between the abduction and restitution to liberty. This done, I should immediatly proceed to declare his punishment, for his false and Calumnious jactitation of Marriage with the Actrix, but that

that I am necessitated to break through the ambush of some few doubts which lye in the way. The first is a supposal that the Actrix had given her consent to what was done, I answer, that the Raptor can never be admitted to the proof of such an allegation, but for better assurance of what I say, take the words of *Pacianus de probationibus lib. 1. cap. 50. n. 30. p. 262. Raptor non auditur probare volens puellam raptam sponte sibi Consensisse quando puella probavit violentiam.*

I answer further, that were he admitted to such proof, nay could he make good proof thereof, it would not availe him in that behalf, for saith *Navarr Consilio 2. de raptoribus (p. 319.)* decideing the Case between *Iohn* and *Brancaleona* on the one part, and the Father of *Brancaleona* of the other, *consensus puella ut raperetur, non sufficit, ut non dicatur rapta, quia ut dicatur talis sufficit ut contra voluntatem patris sit abstracta, siue id fiat de voluntate puelle siue Contra voluntatem ejus* and the Doctrine of *Thomas Aquinas 2. 2. q. 134. Art. 7.* justifieth th's decision, you have also the same Case and the like decision together in *Martinus Azpilcueta titulo de raptoribus* in these words *Iohannes rapuit Brancaleonam patri, ipsa tamen volente & consentiente cum qua contraxit matrimonium, postmodum mota lite a patre, fuit lata sententia contra dictos Iohannem & Brachaleonam* it is also said there that *rapiens non potest raptam ducere in uxorem nisi postquam separata fuit ab illo.* It will be objected perhaps that the arguments which we offered in proof of her dissent and opposition to the pretended marriage viz. her weeping and crying are but fallible and might have been feigned, for we read in the ancient Annals of *Ireland* that *Dearberguill* the Daughter of *Malauuglin* King of *Meath*, and not his wife as *Cambrensis* mistooke it,) being for a long time enamour'd with *Dermott Mac Murrough* then King of *Leinster*, she sent him word by a privat messenger, that her husband King *Tighearnan* was then gon

Pilgrimage to *St: Patricks* Purgatorie, and that she desired him without any delay to come for her promising to become his wife, it appears also in the same Story that *Dermott Mac Murrongh* did imbrace the motion and tooke hold of the opportunity which the absence of her husband gave him, yet notwithstanding her amours, her invitation of him and promises to come away with him without opposition, when he came for her she put on a seeming unwillingness, and to give the better Colour to her dissimulation, she struggled wept and cryed, as though she had never Consented to have Eloped with him; but that he had violently forced her away against her will and minde, so that the struggling weeping and crying of women are not alwaies certaine indications of their minde.

My answer to this objection shall be to shew the dissimilitude of both Cases, for in the Case of my Client, it is not so much as alledged, that she gave any encouragement unto, or was privie to the intention of the Defendent to take her away, Secondly, my Client afterwards made a protestation against the abductor, which the King of *Meath's* Daughter did not; if therefore that Queen had not invited *Dermott Mac Murrongh* to that undertaking, or had she protested in forme of Law as my Client did, against it, her struggling weeping and crying might have been presumed to have been as unfeigned symptoms as my Clients were real arguments of her dissent.

If it shou'd be alledged on the behalf of the Defendent that there is no full proof that he had Carnal knowledge of her, and that therefore the pretended Marriage doeth not appeare to be void *ratione raptus* to this objection I should make three answers, the first is that we have sufficiently proved the violent Compression of her, the 2. is that in case we had no direct proof thereof *Fontanella* saith, upon a general presumption of Law, *rapta mulier vix a nullo creditur unquam integra exisse a*

*manu raptoris Clausula* 5. where he instanceth *de Helena & rapta ejus a Theteo*, My third answer is, that Carnal knowledge is not necessary to the Consummation of a Rape, for it may be *non intercedente Copula* and therefore *Carolus Malletus* saith *delictum raptus in ipsa abductione consummatur*, *Allegatione.* 57. p. 605. all which agrees with what I alleadged before out of *Alfisu odorenfis*,

If it should be objected that *Paulus* that ancient and most learned Lawyer *lib 2. sententiarum tit. 19.* instanceth of some Marriages in case of Rape and thereupon saith *matrimonia hoc jure non contrahi, sed tamen contracta non solvi, i. e.* such Marriages ought not to have been made, but being made they cannot be dissolved; for answer hereunto, I must distinguish *inter legem perfectam & imperfectam*. The imperfect Law is that which does not indeed rescind the fact done contrary to its prohibition but inflicts a punishment upon the transgressor, such as was the *lex furia testamentoria*, and such as is the Law concerning forbidden Marriages against the Fathers will which are those mentioned by *Paulus* the Lawyer, and which by the Civil Law comes under the notion of a rape, now in this Case of Marrying without consent of the Father the Marriage must stand, and the Married must abide the punishment, they being notwithstanding in the valuation of the Civil Law reckned as Concubines, and their Children Bastards, and there was neither Dowrie nor Marriage Portion allowed, so that though such Marriage was civilly null and made incapable by that law of Civil benefits and advantages; yet it vvas not made naturally null, and *Paulus* gives an excellent reason for it in these vvords, *contemplationem enim publicæ utilitatis privatorum commodis anteferri*, for it is of publique Concern that marriages naturally valid be not rescinded, but it is of privat Commoditie and emolument that the Father should be



be pleased in the choyse of his Son in Lavv, but the instance out of *Paulus* concerns onely a marriage without the Fathers consent, but not against the consent of the ravish Party, for such Marriage as I have already proved, comes under the other member of the Distinction *viz. lex perfecta*, which either in its self or at least by the ministry of the Magistrat, rescinds whatever was done against her prescript, and herewith agrees the Law *non dubium C. de legibus*, where it is said *nullum Contractum, inter eos videri volumus subsecutum, qui contrabunt, lege Contrahere prohibente*, and furthermore the same Law denounceth *ea quæ lege fieri prohibentur, si fuerint facta, non solum inutilia sed pro infectis etiam habeantur*, me thinks that Doctor French who hath spoken so much formerly should now, rather then say nothing, desire the benefit of *pro infectis habeantur* which I shall allow him in as large a manner as the gloss will afford, which saith, *maleficia contra legem facta, haberi pro factis ad incommodum facientis, sed pro infectis ad commodum injuriam passæ.*

It may perhaps be objected further, that the Actrix hath lost the benefit of reclamation, for she ought to have commenced her suit immediately *data oportunitate recedendi*, for *qui vult se liberare ratione metus ab aliquo vinculo debet illo cessante statim reclamare* according to that old and celebrated distich in the gloss,

*Effuge Cum poteris ne consensisse puteris  
Nam si perstiteris illius uxor eris.*

To this objection the main force whereof (if any there be) lyeth in the words *statim reclamare*, I answer thus, that the word *statim*, though it be alwayes Confined to a short time, it doth not every where import an instant but admits of *aliquod temporis interval-*

*manu raptoris Clausula* 5. where he instanceth *de Helena & rapto ejus a Theseo*, My third answer is, that Carnal knowledge is not necessary to the Consummation of a Rape, for it may be *non intercedente Copula* and therefore *Carolus Malletius* saith *delictum raptus in ipsa abductione consummatur*, *Malleatione.* 57. p. 605. all which agrees with what I alleadged before out of *Alisi odorensis*,

If it should be objected that *Paulus* that ancient and most learned Lawyer *lib. 2. sententiarum tit. 19.* instanceth of some Marriages in case of Rape and thereupon saith *matrimonia hæc jure non contrahi, sed tamen contracta non solvi, i. e.* such Marriages ought not to have been made, but being made they cannot be dissolved, for answer hereunto, I must distinguish *inter legem perfectam & imperfectam*. The imperfect Law is that which does not indeed rescind the fact done contrary to its prohibition but inflicts a punishment upon the transgressor, such as was the *lex furia testamentoria*, and such as is the Law concerning forbidden Marriages against the Fathers will which are those mentioned by *Paulus* the Lawyer, and which by the Civil Law comes under the notion of a rape, now in this Case of Marrying without consent of the Father the Marriage must stand, and the Married must abide the punishment, they being notwithstanding in the valuation of the Civil Law reckned as Concubines, and their Children Bastards, and there was neither Dowrie nor Marriage Portion allowed, so that though such Marriage was civilly null and made incapable by that law of Civil benefits and advantages; yet it was not made naturally null, and *Paulus* gives an excellent reason for it in these words, *contemplationem enim publicæ utilitatis privatorum commodis anteferri*, for it is of publique Concern that marriages naturally valid be not rescinded, but it is of privat Commoditie and emolument that the Father should be

be pleased in the choyse of his Son in Lavv, but the instance out of *Paulus* concerns onely a marriage without the Fathers consent, but not against the consent of the ravisht Party, for such Marriage as I have already proved, comes under the other member of the Distinction *viz. lex perfecta*, which either in its self or at least by the ministry of the Magistrat, rescinds whatever was done against her prescript, and herewith agrees the Law *non dubium C. de legibus*, where it is said *nullum Contractum, inter eos videri volumus subsequutum, qui contrabunt, lege Contrahere prohibente*, and furthermore the same Law denounceth *ea quæ lege fieri prohibentur, si fuerint facta, non solum inutilia sed pro infectis etiam habeantur*, me thinks that Doctor French who hath spoken so much formerly should now, rather then say nothing, desire the benefit of *pro infectis habeantur* which I shall allow him in as large a manner as the gloss will afford, which saith, *maleficia contra legem facta, haberi pro factis ad incommodum facientis, sed pro infectis ad commodum injuriam passæ.*

It may perhaps be objected further, that the Actrix hath lost the benefit of reclamation, for she ought to have commenced her suit immediately *data oportunitate recedendi*, for *qui vult se liberare ratione metus ab aliquo vinculo debet illo cessante statim reclamare* according to that old and celebrated distich in the glosse,

*Effuge Cum poteris ne consensisse puteris  
Nam si perstiteris illius uxor eris.*

To this objection the main force whereof (if any there be) lyeth in the words *statim reclamare*, I answer thus, that the word *statim*, though it be alwayes Confined to a short time, it doth not every where import an instant but admits of *aliquod temporis interval-*

*luy & temporem, ff de soluto matrimonio, l. quod decimum, lib. 24. tit. 3. infor:)* so that *Lucas de Penna*, on the *Code de erogatione militaris annonæ. l. 5. (lib. 12. tit. 37.* saith that the word *statim* is sometimes extended *ad unum* s<sup>c</sup>metimes *ad duos menses*, within which time our suit was Comenced.

I confesse that *Skene* in his exposition on that part of the Laws of *Scotland* which they call *Regiam Majestatem*, exposeth himself in these very words that the Complaint of a Rape shou d be made the same day and night in the quilk the Crime is committed, *quia lapsu diei hoc crimen perscribitur, Skene de verbo Rape* and hence it is I believe that *Spellman* speaking of the Consuetudes or Statutes of *Scotland* saith *si ultra unam noctem expectaverit rapta ad habendum concilium amicorum suorum ita quod recenter non faciat sequelam, & hoc probetur, Defendens id est Raptor quietus erit*, I think we are more concern'd in the opinion of *Fleta. lib. 3 cap. 5. & præterea* whose opinion it is, that *conqueri oportet fæminam cui illata est vis intra quadraginta dies*, which termination of time as a good Antiquarie observes vvas derived from the *Salique Lavv*.

But to make a more direct answer to these two instances, as for the Constitutions of *Scotland*, they have no bindeing force on us, vvhoe are govern'd by Lavvs of our ovvn, and as for that of *Fleta*, I think it is not applicable to our Case, but to an appeale of Rape at the Common Lavv, according to the first of *Westminster* the first and the 13. and the 3. *Edward 1.* vvhoe vve read that any person may sue vvithin 40. dayes, but if not then, the King shall have Suit, furthermore the time of such appeal hath been enlarged in after times as appears by *Stampsford* in the Pleas of the Crowvn, speaking of a shorter time antiently limited for prosecution of an appeal at the Common Lavv, vvhoe vvrites after th's manner, *tamen le ley neist issint pris a cest jour car si homme fait fresch suit, Coment que il ne Comensa son apel, den:*  
on.

*en tres Ans apres uncore sera dit asses bon. i. c.* The Lavv is not so taken at this time for if fresh suit be made, although an appeal be not Commenced within two or three years, it shall be good enough, wherefore to compare this case with ours, we say that she did not only Commence her suit so soon as she recovered her selfe out of the amazement that this force brought upon her which could not have been done sooner; but also immediately on the first night she came to *Dublin*, she made a protest in due forme of Law whereby she perpetuated her right both of action and exception, for annulling the Marriage for want of Consent which is apparent in the remarque of *Antonius Genuensis* p. 282. for there he saith *Notandum præterea protestationem puellæ, multum removeve Consensum, non obstante quod sit Contraria factio, cum protestatio in his quæ dependent a voluntate nostra, removeat Consensum ab actu durante causa metus.*

But let it be granted *ex suprabundantia causæ* that we were bound by the vvords of *Fleta conquari oportet feminam intra quadraginta dies*, or that we vvere obliged by the *Regiam Majestatem* of Scotland in these vvords. *Si ultra unam noctem expectaverit rapta ad habendum consilium amicorum* as also in these vvords *lapsu diei hoc crimen præscribitur* yet we have pursued the rigour of both for she not  
in usum the marriage  
 only Consulted vvith her friends thereof but also made a formal Complaint to the Magistrat, and had him thereupon Committed to Prison the same night she came to Towns vvithin vvass so short an interspace of time as came vvithin the strict confinement of a *statim reclamare*.

About the year 1662. there depended a cause of this nature between *Simon Abrey* and *Alfoon Knight* before one *William Thunder* official of *Roger Cross* Arch-deacon of *Dublin*, which by appeal was brought into judgment before *Robert Warren* then principal official of the Metropolitcal Court of the Arch-

Eish p.

Bishop of *Dublin*, it seems the official of the Arch-deacon though the Marriage between the said parties was contracted *per vim & metum* decreed them to Co-habit as man and wife, and this sentence was confirmed by the Arch-bishops principal official for which he gave the reason following, *viz, quia dicta Alsona quam citò potuit ab eodem Simone non effugit sed cum eo aliquandiu permansit*, but the said *Alsoon* upon this sentence pronounced, appeal'd from the Metropolitall Court at *Dublin* to the Primatiall Court at *Armagh*, when *John* Arch-bishop of *Armagh* delegated by special Commission *James Leech* one of the Canons of the Cathedral of *Armagh* to hear and determine the said cause of appeal, where having fully heard both parties at *Termon Fechan*, though he found that the said *Alsoon* had Co-habited with the said *Symon* for a moneth, and her parents were consenting thereunto; yet for as much as it appeared unto him that the Marriage was contracted *per vim & metum*, and that she made reclamation against the said marriage and fled from the said *Simon*, (as my Client did from the Defendent) so soon as she could, he voyded and nullified the sentence of the Arch-deacon of *Dublin* his Official, and of the Archbishop of *Dublin* principal Official, and decreed by his sentence definitive as followeth.

## IN DEI NOMINE

Amen.

**A**Uditis, vifis, cognitis & plenius intellectis meritis & circumstantijs, causæ appellationis, & ipsius causæ principalis, primo coram honorabili Viro Magistro Gul. Thunder officiali Domini Rogeri Crofs Archi-diaconi Dubliniensis, inter Aliciam Knight mulierem, partem adtricem ex parte una, & Simonem Abrey ejus de

de facto maritum, partem ream ex parte altera, mota & aliquan-  
 dum pendens indicis; deinde per viam appellationis, ad Curiam  
 Metropolitica[m] Dublinensem devoluta, & ibidem finaliter termi-  
 nata, ac ad Curiam Metropolitica[m] Armachanam totius Hiberniæ  
 Primatalem denuo per appellationis Viam devoluta, & nobis per  
 Reverendissimum in Christo patrem & dominum Dom. Johannem  
 Dei & Apostolicæ sedis Gratia Archiepiscopum Armachanum,  
 totius Hiberniæ Primatem, sine Canonico terminandum commissæ.  
 Et quia nos visis & rimatis actis & processibus causarum hujusmo-  
 di coram Magistro Roberto officiali Curie Dublinensis iudice a quo  
 introductis, & coram nobis iudice ad quem productis, invenimusq[ue]  
 per depositiones testium fide dignorum coram nobis productorum,  
 contra quos seu quorum dicta, nihil pro parte dicti Simonis erat ob-  
 jectum, sive propositum, & alia legitima documenta animum nostrum  
 iuste moventia, memoratam Aliciam, suam intencionem, tam in  
 appellationum, quam in sui principalis causis, bene & legitime fun-  
 dasse. NOS igitur Jacobus Leech Ecclesiæ Armachanæ Cano-  
 nicus, partibus, & causis antedictis Commissarius, per suprascrip-  
 tum Reverendissimum Patrem, & Dominum nostrum Dom. Johan-  
 nem Archiepiscopum & Primatem supradictum, specialiter deputa-  
 tus: Christi nomine primitus invocato, & de juris Concilio perito-  
 rum ad plenum deliberati, supradictam Aliciam bene & legitime  
 appellasse, ac iudices supradictos a quibus exstat appellatum, nulli-  
 ter & nequiter, injuste & inique sententiasse pronuntians, decer-  
 nimus & declaramus; eorumq[ue] sententias infirmamus, cassamus,  
 irritamus, & annullamus, viribusq[ue] vacuumus, & quia invenimus  
 per depositiones testium fide dignorum, quod dicta Alicia per vim &  
 metum amicorum suorum compulsa, matrimonium cum dicto Simone  
 contraxit, & nunquam in eundem consensit, imò verius dissensit,  
 quodq[ue] quam citius potuit, ipsius comitum effugit, matrimonium  
 igitur de facto & non de jure, inter dictos Aliciam & Simonem  
 contractum, quatenus de facto & non de jure processit, cassamus



*irritamus, & annullamus, cassum, irritum & nullum de jure fuisse & esse pronuntiamus decernimus & declaramus, eosdemq; ab invicem separamus, & divorciamus, ac dotes & donationes propter nuptias, paraphernalia inter eosdem prefata sive donata, decernimus hinc inde fore restituenda, ac utriq; parti alibi in Domino nubendi licentiam impertientes, per hanc nostram sententiam definitivam quam in his scriptis fecimus justitiâ mediante, &c.*

By these two sentences of the Arch-bishop of *Armagh* his delegat, and the Arch-bishop of *Dublin* his principall officiall though of a contrary tenor each to other it appears that the *vim passa* making that reclamation, and flying so soon as she could did enough to avoid a marriage contracted *per vim & metum*, they both agreed in point of law, that reclamation and flight *quam cito potuit* was sufficient to that effect, for Robert *Waren* the Arch-bishop of *Dublins* principal official being rightly informed in point of law though mistaken as it seems in matter of fact decrees thus, *quia quam cito potuit ab eodem Simone non effugit sed cum eo aliquandiu permansit, igitur eandem Aliciam eidem Simoni fore compellendam adharere decernimus* and again *James Leech* delegated in the same cause by the Arch-bishop of *Armagh*, being rightly informed as well in matter of fact as of law decreeth in manner following,

*Quia invenimus per depositiones testium fide dignorum quod dicta Aljona seu Alicia quam citius potuit dicti Simonis comitum effugit matrimonium igitur de facto & non de jure inter dictos Aliciam & Simonem contractum per vim & metum, quatenus de facto & non de jure processit cassamus irritamus & annullamus* so that the Arch-bishop of *Dublins* principal official pronounced for the marriage, because he thought that the *vim passa* had not made reclamation nor fled so soon as she could, and the Arch-bishop of *Armaghs* delegat declared it no marriage because he was assured by good proofs, as you have been in this cause that  
the

the *viu passa* did make reclamation and flye from the Defendent so soon as she could *quod erat probandum.*

H therto I have proceeded in reference to the fear and force that vvas upon her, vvhereby it appears as I humbly conceive that you ought in justice to pronounce sentence against him, *non declarando irritandum dictum matrimonium; sed a principio irritum fuisse*, for Panormitan holdeth in *hujusmodi matrimoniis non est opus quod petatur rescissio* but this is not all, vve humbly expect and desire that the Raptor be also Excommunicated, for *Excommunicationis pana Raptor una cum ei faventibus punitur cap. si quis virginem 36. q. 2.* vvwhich is the Constitution of Gregory the 2. in *synodo Romana.*

If it shall be objected that the Raptor is already Excommunicated and therefore is not to be Excommunicated againe in the same Cause for that it vvould be vain and void of effect, to this I ansvver, true it is, that the first Excommunication hath more effects then the second can have, yet the second is not vvithout its effect, for there are three effects of Excommunication first a declaration of being separated from God, the second a separation from the communion of the faithfull, the third effect is a strict retention of the partie vvithout the communion of the Church, untill he be absolved, I confesse that it is the third effect onely that is vvrought upon one excommunicated the second time, so that though he shou'd be absolved from the first Excommunication, yet he is to be barred the communion of the Church untill he obtain absolution from the second Excommunication, for it is true vvhat Panormitan saith *de Indeis & sacracenis cap: ita quorundam ( p. 86. ) ad primos duos effectus secunda excommunicatio nihil operatur, sed quoad tertium, scilicet effectum retinendi eum extra communionem donec fuerit absolutus, bene operatur, & idem dicendum est* saith Panormitan *de tertia, quarta & nltiori*, vvhere it is apparent  
L that

that he may be Excommunicated and that to good effect the second, third, fourth time or oftner, Againe there is a twofould Excommunication the one for a Contempt, the other *propter delictum, vel injuriam alicui illatam*, the Defendent being Excommunicated already for his Contempt, may be absolved upon his appearance, submission and security given *parere mandatis ecclesie*, but if he be once Excommunicated *propter delictum* he cannot obtaine absolution *quousque parti laesa fuerit satisfactum*, untill the partie injured receive satisfaction. Wherefore in regard he may be legally Excommunicated the second time and that is most just he should I conceive vve have good reason to desire it.

Much might be spoken to the aggravation of this Crime vvere the severity of punishment my chiefest aime, yet I shall make use at present but oft two aggravations, the one is taken from the consideration of her being under the guard and tuition of her father, for in the booke of *Ecclesiasticus* Cap. 42. it is said *filia patris abscondita est, vigilia & sollicitudo ejus auferit sonum*, ne forte in adolescentia sua adultera efficiatur hereby it is easily observed, that that offence vvch vvould have been noe more then fornication in a young Woman at her ovvn disposall is deemed adultery in her vvho is under the tuition of her Parents, and the reason is very good, for it is founded in the similitude betveen such a young Woman and a Wife, for even as a married Woman for as much as she is under the protection of her husband, and her body is her husbands, if she have to do vvith any other man in *congressu carnis* doeth by the injury hereby done unto her husband become an adulteress, so a virgin vvhillst she remaines in the povver of her Father and is his as to the Custody of her person, vvhen she yeelds though through fear her body to any man, injures him, and as *Gasper Asiete* saith *se puede llamar adultera* may be called an adulteress

as she is termed *Ecclesiasticus* the 42 whence it is inferred by the Casuists, that when she vvho is under the povver of her Father looeth her Virginity even in the Case of Rape; it is such a circumstance as must necessarily be mentioned in her Confession, for that it changeth *speciem peccati*, and is a sin of injustice as vvell as of Luxurie, vvhereas a Virgin not being under the povver of a Father but at her own dispose, if she loose her Maiden-head, although it be a sin of Luxury, the Doctors say it is no sin of injustice, nor is it an offence to any othe: for so much as she is *domina sui Corporis*.

The other aggravation is so well expres'd in the words of the Poet *Catullus* that the recital of them in their Original, will be sufficient without prostitution to vulgar understandings.

*Ut flos in septis secretus nascitur herbis  
 Ignotus pecori, nullo succissus aratro,  
 Quem mulcent aura, format sol, educat imber,  
 Multi illum pueri, multæ optavere puellæ,  
 Idem cum tenui captus defloruit ungue,  
 Nulli illum pueri, nulla optavere puellæ:  
 Sic virgo cum intacta manet, dum chara suis,  
 Cum castrum amisit, polluta Corpore, florem,  
 Nec pueris hæc chara manet nec chara puellis.*

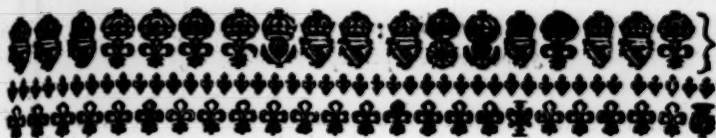
There remains yet in arrear one branch of the Cause his jactitation of Marriage which in the opinion of *Grotius Deservus* as great a penalty as his other offence for in his annotations on the 22 *Deuteronomy* he saith *diffamatur par habetur inferenti vim virgini*, and nowonder for the Rabins reckon Calumniators amongst *לא מְסֻלִּים פְּנֵי הַשְׁכִּינָה* that is to say amongst those who are not to see God in glory (*vid animadver: in Pink p. 253*)

This

This matter of diffamation is so clearly proved against him, and the Law is so evident in daily practice as to that point, that shall not so much abuse your patience and leisure, as to spend time and words in rendering it more evident, nor shall I desire more of your justice therein at present, then to pronounce him guilty of an unjust and temerary jactitation of Marriage with the actrix, to impose on him perpetual silence in that behalf, and lastly to Condemn him in all our expences, all which we hope and humbly desire that you will immediatly pronounce, for that we are confident the Case is so Cleer that it need not lye longer in the ballance of deliberation, and that whatsoever I have said in this debate may be interpreted no other wise then

συμφορῆς τῇ κοινῇ καὶ ἀκαταλυσίας

חם ונשלם תהלה לאל ברא עולם



Short Advertisements given to the said Court and  
Auditory after sentence pronounced, delivered in  
a speech by *Dudley Loftus* Doctor of the Laws &c.

**M**Y promise hath made me debtor to the expectation of this assembly for an advertisement which I thought to have given then in the series of my former discourse, which through haste I then omitted, if therefore I may presume on your favour and licence, I shall take advantage of so many witnesses of good note as are here present, to make a reflection in a word or two, on the Plaintiffs case, wherein If I shall say any thing not agreeable to your opinion, I shall in all the flexures of humility submit to your correction and the regulation of your better judgment, me thinks I heare most persons declare the satisfaction they have received in your most righteous judgment, yet some seem to be of opinion that the splendour of your justice shines upon the Lady no otherwise, then as the Sun profusely sheds its beams on blasted blossoms which receive no benefit thereby, and others think that chastity without Virginitie is but as a Garland of Flowers that hath lost its sent and colour; for my part I have already declared my opinion, that untouch't Virginitie is the most precious Jewel of the femall sex, and I do agree with *Ariosto* who saith.

*Non*

*Non nobilita ne gran fortuna basta,  
Se per nome e per opere non e casta.*

And I confess that it was a great misfortune that the bud of her Virginity was pul'd from the stalke before it could spread or shew it self in marriage, and that she cannot receive an equivalent exchange in satisfaction of that which she hath lost, yet I dare affirm that this loss hath not brought her into disgrace with prudent men, nor doth her honour thereby go into diminution, for she hath no more stained her reputation then she hath stung her conscience by enduring that which she could not avoid, insomuch that I dare appeal to the strictest tribunal on earth for judgment, whether she hath received so much as *famia vulnuscolum* by the force offered unto her; nay I am of opinion that some unsuccessfull contests are to be preferred before some Victories for which reason *Tornay* in France bears a Badge of Reputation to this day for that *Cesar* confelleth in his Comentaries that he found a more valourous resistance there then elsewhere, I am confident the reason may be urged much more to the advantage of the persons who made the resistance then the place where it was made, and if so, I rest assured my Client hath more reason to glory on the Theatre of a publike appearance then to shrink into the shade of obscurity, or to hide her self in the dark corners of a bashfull retirement, for let us consider her first of all *ratione metus concussi*, and then *ratione vis illata*, as to the first it is confest that a married woman if she should yield to an adulterous act by reason of fear, ( though it were so great as might be incident to a valiant man ) she would in the opinion of the Casuists be held guilty of adultery, *quia metu mortis non licet contra legem agere quæ est juris natura, eo quod*



*intrinsecam habet malitiam*, for not to preserve the fidelity of Wedlock is against the law of nature and in it self intrinsically evil, and therefore not excusable upon any consideration of fear though never so great: But a Virgin, if she through fear consent ( which my Client did not. ) to a constupration, she is not guilty of the formall evill thereof, for *non censetur Cooperatio in malo nisi ubi res est intrinsece mala non pendens a voluntate Concurrentis* saith *Candidus de Confessione sacramentali Artic. 23. Dubio. 12*, but *malitia stupri* doth so depend on the will of the woman that *illa concurrente tollatur*, but *illa penitente ponatur*, the difference of the two cases consists in this, that the circumstance of adultery doth not depend *ex voluntate famine* as that of Constupration doth, so that if my Client had yielded through fear, she had not been guilty of the evil of Constupration, ( though the stricter Casuists would perhaps extend it *ad malitiam fornicationis* ) but the case is otherwise with my Client for fear did not prevaile with her, she was compelled by force,

And ye know that force and imbecillity are the great distinguishers of sin insomuch that not to commit a sin through imbecillity makes one guilty of sin, whereas to be concern'd in sin through imbecillity excuseth from sin, wherefore saith a famous Doctor of the Lawes *Johannes de Montbolon in affirmatione* of the first position, *qui sola virium imbecillitate desinit peccare reus peccati est, quia ream mentem habet, vide Cap si cui etiam de penitentia dist. 1.* and in proof of the later position viz. that to be concern'd in sin through imbecillity excuseth from guilt, I shall produce a testimony from the very fountain of the law, for *Azo* who is termed *fons legum* saith in concurrence with *Baldus, tolle voluntatem de medio & omnis actus erit indifferens*, and therefore *Gabriel Biel* expresseth himself thus, *in voluntariis neq; vituperamur neque laudamur*, which agreeth with

with this saying of St. *Austin*, *violentia non violatur pudicitia femina, quia violenter compressa, carne non utitur, sed sine consensu toleratur quod alius operatur*, that father is yet more clear in this point when speaking of a married man who forced a modest woman, he saith *duo in adulterio fuerunt unus commissus*, the reason hereof may be perfectly rendered in the observation of *Nicholaus de Orbello*, viz, that as the understanding being under the Dominion of anger is not *sui juris*, so *timentes vel vi oppressi non habent voluntatis plenitudinem* nay rather *velle non dicitur qui metus causa vult vel vi oppressus succumbit*, to this you may add the words of *Baldus* *Metus est participatio duarum qualitatum scilicet voluntatis & voluntatis, cujus effectus declinat ad velle, & affectus inclinatur ad nolle. de his quæ vi metusque causa sunt, Cap. 1. n. 5.* and *Accursius* declares that *voluntas meticolosa est tacta quædam contradictio, & iurgis accedit dissensui quam consensui.*

Perhaps the foregoing arguments did not slide so smoothly into the apprehension of the unlearned as I could wish, for they were taken out of the knotty timber of School divinity, which for the most part rejecteth the plain, yet I shall endeavour to make my self more intelligible to them in what remains.

I know that many ingenious persons do oftentimes insinuate false opinions into the minds of the ignorant and do invade the persuasions of less discerning persons by a licentious ravelle which may be termed a blamable liberty of practizing witt too freely, and that it is an easie matter for such ignorant persons to be deluded thereby, who having no further recourse then to their own imaginations will not remit such matters to the examination of reason.

Hence it is that this Ladies condition hath been drawn into debate, and though some persons and they of honour and  
judg

judgment, hold it for as evident a truth, as that the three angles of a triangle are equall to two right angles, that she is no whit prejudiced by her late misfortune, yet others seem to be of opinion, that she is thereby brought under the suspicion if not presumption of worse dispositions, and a greater facility of temptation, and that therefore she is notably damnified in her reputation, which opinion is promoted with too much temerity by some of like mind with the Jesuists, who as the Franciscans say by a dexterous manner of depressing other religious orders, seek to procure grandeur to themselves, but do not consider that the best way to defend their own reputation, is to be carefull of the credit of others, for my part I shall not precisely determine the matter to the tenet of either of those parties, for we are not now in the b'azon, are tricking a coat in Heraldry, where so small a thing as a colour of one hair makes a coat another thing, as in *Erminites*; but I think that things of this nature are like to the time which the rules of religion appoint for the recital of howers, which as the Casuists teach *habet aliquid latitudinis*, the later opinion seems to me too severe & grounded upon a temerary surmise, not to be warranted by any principle of piety or rule of charity, and though the first opinion may be in courtship admitted as a favourable mistake, for the Ladies advantage; yet I think it best to temper the extremity of these two opinions in a middle way though *Sub conditione crucis*, my opinion therefore is that though she is not altogether as she was before to every fancy, yet is she not really or considerably the worse in the opinion of the most judicious and if there be any difference between the state of her untoucht virginity, and her new confirmed chastitie of mind, as to valuation it is almost like that of the stars in the firmament whole different magnitudes are not

M

per-

perceptible to the most clear seeing eye, so that I presume that a ravish'd innocent, and an untoucht Virgin may seem to shine with equal splendor in their respective Orbs, and that this chaste Lady may be resembled to the pure mettall of the Crown pieces of the sometime Lords Justices of this Kingdom, which though their stamp and impression should be altered, or lost, would notwithstanding carry no less intrinsick value in the same weight; the Duke of *Somerset* said that all his actions were blameless in the eye of justice, so I may say that all her sufferings in the time of her abduction were as innocent in the eye of honour, nay that the Heroick acts performed by her in the defence of her chastitie do exceed a volumn of their vertues who have preserved the integrity of their bodies: *quid enim prodest pudicitia corporis animo constuprato* saith St. Hierome in *Jeremiam lib. 2. cap. 7.*

Again it is a thing agreeable to the ingenuity of all worthy persons to observe that law which they impose upon others, and therefore *l. ff. de pactis* it is said *nihil tam humane fidei consentaneum est quam ea quæ placuerunt servari*, give me leave therefore in a modest freedom to aske the most vertuous Lady amongst you what she could have thought criminal in her self to have been forced as that Lady was, I hope enough hath been spoken to determine your judgment in this affair so far at least as to clear her reputation, and I know that to insist too much on the proof of so clear a truth would crush your attention as flat as a (B) after a cliff, I shall therefore immediately coast upon a conclusion and therein desire you rather to lament her late sufferings with tenderness of heart then judge her present condition with severity of censure, let no man discharge upon her innocency the misapprehensions of his wild fancy or untamed wit, let no man make her Rape farther mat-  
res

ter of discourse, but rather let that misfortune be hidden under the vail of perpetual forgetfulness, let the Garland of chastity remain unwithered on her brow let her flourish in an honourable reputation whilst the Defendant deserves to have his goods confiscate and his Memory banished out of the world: and let her vertuous mind enjoy the quiet of a Serene conscience, whilst his black Soul is left during Divine pleasure to the dismal horror of midnight dreams, to the terrors of the law, and the dreadfull apprehensions of the day of judgment.

---

**FINIS**

---

